

**Short Term High Quality Studies to Support Activities under the Eastern Partnership
HiQSTEP PROJECT**

**STUDY ON THE ANALYSIS OF LICENSING AND FISCAL
FRAMEWORKS FOR CONCESSION AGREEMENTS IN THE
ENERGY SECTOR IN THE EASTERN PARTNER COUNTRIES**

COMPONENT 3 REPORT:

**STANDARDISED PROPOSAL FOR PROCUREMENT PROCEDURE AND AWARD OF
CONCESSION AGREEMENTS**

November 2017

This report has been prepared by the KANTOR Management Consultants Consortium. The findings, conclusions and interpretations expressed in this document are those of the Consortium alone and should in no way be taken to reflect the policies or opinions of the European Commission.

Preface

The present report is a deliverable of Component 1 of the **STUDY on Analysis of Licensing and Fiscal Frameworks for Concession Agreements in Energy Sector in the Eastern Partnership Countries**, carried out in the framework of the EU funded project **Short Term High Quality Studies to Support Activities under the Eastern Partnership – HiQSTEP, EuropeAid/132574/C/SER/Multi**. The HiQSTEP Project is implemented by an international consortium under the leadership of Kantor Management Consultants. The present study supported the activities of Platform III “Energy security” – of the Eastern Partnership.

The EaP Platform III Work Programme 2014-2017 has identified Public Private Partnerships, including licensing and concessions for the energy sector as a priority area. The DG NEAR and DG ENERGY are the driving forces in cooperation with the EaP Countries on this theme.

The present study was implemented by a team of international and local experts under the leadership of **Vagn Bendz Jørgensen** - Study Team Leader and international energy expert; and composed of **Evangelia Vassilaki** – international legal expert and the following national experts: **Vardan Grigoryan** (Armenia), **Asya Chalabova** (Azerbaijan), **Maxim Shapelevich** (Belarus), **Tamta Nutsubidze** (Georgia), **Tatiana Vieru and Elena Stratulat** (Moldova) and **Vitaly Radchenko** (Ukraine).

Przemysław Musiałkowski, Team Leader of the HiQSTEP Project, was responsible for the overall supervision, quality check and management.

Sincere thanks go to the national experts and stakeholders in all six countries who provided information through interviews and responses to questionnaires and contributed to the practical implementation of the study.

November 2017

CONTENT

1	BACKGROUND AND PURPOSE.....	7
2	EXECUTIVE SUMMARY	8
3	CONCESSION AND PPP AWARD PLANNING	9
3.1	Concessions and PPPs.....	9
3.2	Concessions Procurement Procedure	12
3.2.1	Preparation Stage.....	13
3.2.2	Publication	18
3.2.3	Submission of tenders and selection of tenderers.....	23
3.2.4	Evaluation of tenders	25
3.2.5	Award.....	26
3.2.6	Subcontracting and modifications of the contract during its term.....	27
3.2.7	Contract implementation.....	28
3.3	Drafting of the Contract	28
4	OIL AND NATURAL GAS MODEL CONTRACT	29
4.1	Preamble	31
4.2	Definitions.....	31
4.3	Interpretation	35
4.4	ARTICLE 1. Scope of the Agreement	35
4.5	ARTICLE 2 Duration of the Exploration Stage.....	36
4.6	ARTICLE 3 Lessee's Exploration Work Commitments	37
4.7	ARTICLE 4 Technical Advisory Committee	39
4.8	ARTICLE 5 Annual Work Programme and Budget	40
4.9	ARTICLE 6 Surrender During the Exploration Period - Relinquishment.....	40
4.10	ARTICLE 7 Discovery Exploitation Stage	41
4.11	ARTICLE 8 Duration and Expiration of the Exploitation Period.....	43
4.12	ARTICLE 9 Conduct of Petroleum Operations in the Contract Area – Obligations of the Lessee	45
4.13	ARTICLE 10 Conduct of Petroleum Operations in the Contract Area – Rights of the Lessee	46
4.14	ARTICLE 11 Unitisation	47
4.15	ARTICLE 12 Environmental Protection.....	47
4.16	ARTICLE 13 Royalties	49
4.17	ARTICLE 14 Taxation	49
4.18	ARTICLE 15 Fees and Bonuses	49
4.19	ARTICLE 16 Valuation of Hydrocarbons.....	49
4.20	ARTICLE 17 Measurement of Hydrocarbons and By-Products.....	50
4.21	ARTICLE 18 Satisfaction of Domestic Requirements.....	50
4.22	ARTICLE 19 Records, Reports and Data Inspections	51
4.23	ARTICLE 20 Transfer and Assignment of Rights and Obligations	53
4.24	ARTICLE 21 Violations, Lessee's Forfeiture.....	54

4.25	ARTICLE 22 Insolvency of the Lessee	55
4.26	ARTICLE 23 Settlement of Disputes.....	55
4.27	ARTICLE 24 Performance of the Agreement - Time	57
4.28	ARTICLE 25 Contractors, sub-Contractors, Personnel and Training	58
4.29	ARTICLE 26 Force Majeure.....	58
4.30	ARTICLE 27 Suspension of the Exploration Stage.....	59
4.31	ARTICLE 28 Notifications – Agent for Service.....	59
4.32	ARTICLE 29 Modifications of the Agreement	60
4.33	ARTICLE 30 Applicable Law.....	60
4.34	ARTICLE 31 Miscellaneous	61
4.35	ARTICLE 32 Effective Date of Agreement.....	61
4.36	Annexes to the contract	61

5 ELECTRICITY DISTRIBUTION NETWORK MODEL CONTRACT 65

5.1	ARTICLE 1 Scope	70
5.2	ARTICLE 2 [IF APPLICABLE] Development, Maintenance, and Operation of the Network	70
5.3	ARTICLE 3 Term – Effective Date	74
5.4	ARTICLE 5 Tariff Structure	75
5.5	ARTICLE 6 Capital Investments and Efficiency Enhancing Investments	76
5.6	ARTICLE 7 Service Coverage and Terms and Conditions	76
5.7	ARTICLE 8 Service Standards and Metering Reporting Standards	78
5.8	ARTICLE 9 Customer Complaints	78
5.9	ARTICLE 10 Customer Invoice	79
5.10	ARTICLE 11 Efficiency Standards	79
5.11	ARTICLE 12 Force Majeure.....	80
5.12	ARTICLE 13 Termination	80
5.13	ARTICLE 14 Insurance	83
5.14	ARTICLE 15 Reporting Requirements.....	83
5.15	ARTICLE 16 Settlement of Disputes.....	84
5.16	ARTICLE 17 Confidentiality	84
5.17	ARTICLE 18 Assignment and transfer	84
5.18	ARTICLE 19 Notifications – Agent for Service.....	85
5.19	ARTICLE 20 Modifications of the Agreement	85
5.20	ARTICLE 21 Applicable Law.....	86
5.21	ARTICLE 22 Miscellaneous	86
5.22	Annexes	87

6 POWER GENERATION FACILITY CONCESSION AGREEMENT 92

6.1	ARTICLE 1 Scope of the Agreement – Obligations of the Parties.....	97
6.2	ARTICLE 2 (if applicable) Conditions Precedent	99
6.3	ARTICLE 3 Agreement Term and Supply Term	101
6.4	ARTICLE 4 Bank Guarantee.....	101
6.5	ARTICLE 5 Operating Committee.....	102
6.6	ARTICLE 6 Network Operators Assets	102
6.7	ARTICLE 7 The Facility.....	103
6.8	ARTICLE 8 Testing and Commissioning of the Facility	106
6.9	ARTICLE 9 Extensions and Delays	110
6.10	ARTICLE 10 Operation and Maintenance of Facility	112
6.11	ARTICLE 11 Delivery and Acceptance of Electricity.....	113
6.12	ARTICLE 12 Site Meters	114
6.13	ARTICLE 13 Payment and Invoicing.....	114

6.14	ARTICLE 14 Taxes	114
6.15	ARTICLE 15 Changes to Facility and Transmission System.....	115
6.16	ARTICLE 16 Changes if Law	115
6.17	ARTICLE 17 Force Majeure.....	117
6.18	ARTICLE 18 Default.....	118
6.19	ARTICLE 19 Termination	119
6.20	ARTICLE 20 Extension of the Supply Term or Sale/Purchase of Facility.....	122
6.21	ARTICLE 21 Insurance	123
6.22	ARTICLE 22 Intellectual Property	123
6.23	ARTICLE 23 Confidentiality	123
6.24	ARTICLE 24 Settlement of Disputes.....	123
6.25	ARTICLE 25 Assignment – Change of Control.....	126
6.26	ARTICLE 26 Contractors, Sub-Contractors, Personnel.....	127
6.27	ARTICLE 27 Notifications – Agent for Service.....	128
6.28	ARTICLE 28 Modifications of the Agreement	128
6.29	ARTICLE 29 applicable Law	129
6.30	ARTICLE 30 Miscellaneous	129
6.31	Annexes	130

Abbreviations and acronyms

AM	Armenia
AZ	Azerbaijan
BOOT	Build, Own, Operate, Transfer Contract
BOT	Build, Operate, Transfer Contract
BY	Belarus
CA	Contracting Authority
CHP	Combined Heat and Power Production
CN	Contract Notice
DK	Denmark
EaP	Eastern Partnership
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EPEC	European PPP Expertise Centre
EU	European Union
EUD	Delegation of the European Union
GE	Georgia
HiQSTEP	High Quality Studies for the Eastern Partnership
IPP	Independent Power Producer
MD	Moldova
ME	Ministry of Energy
MEAT	Most Economically advantageous tender
MOE	Ministry of Economy
MOF	Ministry of Finance
PIN	Prior Information Notice
PPA	Power Purchase Agreement
PPP	Public Private Partnership
PQQ	Pre-Qualification Questionnaire
PSA	Production Sharing Agreement/Production Sharing contract
STL	Study Team Leader
TA	Technical assistance
TFEU	Treaty of the functioning of the European Union
UA	Ukraine

1 BACKGROUND AND PURPOSE

The global objective of this assignment is to provide support to the beneficiaries in rationalizing and streamlining their Concessions and PPP frameworks in the energy sector with particular emphasis to concession agreements. There are four elements to be addressed:

Component 1: An assessment of the PPP legal framework at Eastern Partner Countries

Component 2: Identification of PPP units established in Eastern Partner Countries, assess the tasks entrusted to them as well as their decision-making and enforcement capabilities

Component 3: Develop a standardised proposal for procurement procedure and award of concession agreements.

Component 4: Development of an online portal specifically for PPPs in Eastern Partner Countries

The present Component 3 Report focuses on presenting a standardised procedure for procurement and award of concession agreements for energy projects. According to the Terms of Reference the proposals shall take into account the analyses and shortcomings identified in Component 1 and include a proposal for improved framework involving local communities and capacity building. As part of this component at least three types of standard concession agreements shall be proposed encompassing oil/gas exploration and production, transmission and/or distribution networks and power generation facilities. Therefore, three model contracts are presented as well as guidelines for procurement of concessions/PPPs.

Presentation of standardised contracts is complicated because each Partner Country has their own legal framework and several national laws, which must be respected. Tax legislation differs, so do conditions for concessions. For example, for oil/gas exploration and production very different models are in use. Most common model in the Partner Countries is a production-sharing agreement – sometimes overruling other legislation as is the case in Azerbaijan - but there could also be cases of models with precise taxation of the outcome of a license. In the latter case, the economic result of the project is taxed according to the national taxation rules and in local currency and not the physical sale of oil and gas (calculated according to international oil/gas prices).

However, some aspects of a concession contract are relevant to all countries, such as how to end a contract, how to handle changes in the concessionaire's composition or completely new concessionaires taking over an existing license and several other aspects. These general questions will be dealt with in the standard contracts presented. In elaborating the models, a review has been made of existing model contracts in other countries, in some cases developed by the PPP Units.

2 EXECUTIVE SUMMARY

The recommended standardised procedure and three model concessions contracts proposed in this report are based on the EU directives, and namely: the Directive on the award of concession contracts (2014/23/EU); the Directive on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (94/22/EC), the public procurement Directive (2014/24/EU) and the Directive on procurement by entities operating in the water, energy, transport and postal services sectors (2014/25/EU).

In addition to the guidelines for procurement of concessions and PPP, three standardised contracts are proposed for oil and natural gas exploration; electricity distribution network; and independent power producer (solar).

For oil and natural gas exploration and exploitation there are two major forms of contracting: Production-Sharing Agreements (PSA) and *Concessions*. Whereas concessions are normally part of the national legal framework the PSA can be more “tailor made” to fit concrete development plans. PSAs were introduced in the 1960’s as a model suitable for low/middle income countries (with weak legal frameworks) with huge hydrocarbon resources – and of course for international oil companies. In principle, the hydrocarbons produced are shared between the state and an economic operator, in such a way that when actual production starts, part of the value of the oil is used to cover the investments and operational costs – *cost oil*. This can be 10% or higher. The value of the remaining production is shared between the state and the economic operator according to a negotiated formula, which could change with increased production – *profit oil*. Sometimes the PSA overrules other national legislation (often including tax legislation) and the value of the hydrocarbons is calculated in relation to international oil/gas prices in an international currency (usually USD). PSA are relatively simple to implement and can be advantageous when the country in question has a less developed legal framework or conflicting legislation. If the national currency is very volatile, it could be an advantage to both parties to connect the values to an international currency or deliver the state’s share *in kind*.

PSA are commonly used in the EaP Countries. Especially in Azerbaijan, where the major hydrocarbon resources of the region are situated. Most of the PSAs in Azerbaijan were agreed upon during the 1990’s and early 2000’s.

An oil/gas *concession* is an integrated part of the national legislation and normal taxes have to be paid. In addition, in many cases a royalty is included (a % of the production value) and an extra tax in case of extraordinary large discoveries or high oil/gas prices – *windfall tax*. Alignment to the international oil/gas prices is usually applied but the final taxes are paid in national currencies. In many cases the state acquires a share in the production consortium, and thereby forms a joint-venture-like cooperation. To secure that taxes for an oil/gas field are not avoided by subtracting other deficits, often a “ring fence” is introduced in the contract (which separates the oil/gas field in question from other activities of an investor, the costs of which cannot be deducted from the revenue from oil/gas field) to secure full tax payment for the specific project.

In addition to these fees and taxes, some concession and PSA contracts include clauses on how to deliver oil/gas if there is a terminal or pipeline nearby.

In addition to the purely hydrocarbon regulations, a contract will usually also refer to environmental legislation, employment regulations, safety regulations and metering standards. As all these regulations are different across countries; a standard contract has to be completed with these details. However,

many aspects in a model contract are standard, such as rules of changing consortium partners, guarantees, ending a concession and secure development satisfying both the investor and the state.

For an electricity distribution network concession, there are other factors influencing the contract. In case of an expired concession with a new operator, in some instances the value of the present network must be negotiated with the former operator and a compensation agreed upon. There will also be requirements regarding the “quality” of delivered electricity, to faults and voltage level and ways to serve, meter and bill the customers. Also, in distribution, there will be several references to important national laws as for the oil/gas contracts. Alignment of contracts to the general regulations such as the *grid code* is also important.

In the case of a power purchase agreement, the mode of delivery to the grid and the “quality” of delivered electricity are important, and they can vary a lot. Too costly connectors to the grid/transformer station can result in a project being rejected by the investor. Therefore, in major Independent Power Producer (IPP) projects the state or system operator might provide a nearby delivery point. This is the case of several off-shore wind generator parks, but practices differ from country to country.

As it has been described above there will be many differences in contracts due to national legislation and technologies involved. It is therefore impossible to present a standard contract for all energy projects. Even for the same technology there are differences in how the countries develop their own national legal framework and which governmental/regional institutions are involved. Therefore, the templates of standard contracts are presented into which references to national legislation and country specific circumstances can be inserted. When using these templates, care must be taken to make sure that they refer to the relevant national legislation and at the same time respect the EU directives regulating these activities.

3 CONCESSION AND PPP AWARD PLANNING

3.1 Concessions and PPPs

A Concession involving private partners is a particular form of Public Private Partnership (PPP). Although PPPs have never been defined in the EU Public Procurement legislation, they are usually understood to be cooperation between a public authority and a private partner, where this cooperation bears risks that are traditionally borne by the public sector which is often also contributing to the financing of the project. Some PPPs are structured as public contracts, but, based on estimations by the European Commission services, over 60% of all PPP contracts would qualify as concessions¹.

As mentioned in the Component 1 report, the European legislator adopts the following definition of “concession” in article 5 of the Directive 2014/23 /EE: *“concessions’ means works or services concessions, as defined in points (a) and (b): | (a) | ‘works concession’ means a contract for pecuniary interest concluded in writing by means of which one or more contracting authorities or contracting entities entrust the execution of works to one or more economic operators the consideration for which*

¹ Directive of the European Parliament and of the Council on the award of Concession Contracts- European Commission Memo 2014

consists either solely in the right to exploit the works that are the subject of the contract or in that right together with payment; | (b) | ‘services concession’ means a contract for pecuniary interest concluded in writing by means of which, one or more contracting authorities or contracting entities entrust the provision and the management of services other than the execution of works referred to in point (a) to one or more economic operators, the consideration of which consists either solely in the right to exploit the services that are the subject of the contract or in that right together with payment. | The award of a works or services concession shall involve the transfer to the concessionaire of an operating risk in exploiting those works or services encompassing demand or supply risk or both. The concessionaire shall be deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the concession. The part of the risk transferred to the concessionaire shall involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible;”.

It should be mentioned that important information on the definition of the concession agreement and its broadness, according to the European legislator, derives from the preamble of the Directive, however, without including any kind of comparison with PPPs. More specifically, recital 18 reads: *“Difficulties related to the interpretation of the concepts of concession and public contract have generated continued legal uncertainty among stakeholders and have given rise to numerous judgments of the Court of Justice of the European Union. Therefore, the definition of concession should be clarified, in particular by referring to the concept of operating risk. The main feature of a concession, the right to exploit the works or services, always implies the transfer to the concessionaire of an operating risk of economic nature involving the possibility that it will not recoup the investments made and the costs incurred in operating the works or services awarded under normal operating conditions even if a part of the risk remains with the contracting authority or contracting entity. The application of specific rules governing the award of concessions would not be justified if the contracting authority or contracting entity relieved the economic operator of any potential loss, by guaranteeing a minimal revenue, equal or higher to the investments made and the costs that the economic operator has to incur in relation with the performance of the contract. At the same time, it should be made clear that certain arrangements which are exclusively remunerated by a contracting authority or a contracting entity should qualify as concessions where the recoupment of the investments and costs incurred by the operator for executing the work or providing the service depends on the actual demand for or the supply of the service or asset”.*

Also, according to recital 19: *“Where sector-specific regulation eliminates the risk by providing for a guarantee to the concessionaire on breaking even on investments and costs incurred for operating the contract, such contract should not qualify as a concession within the meaning of this Directive. The fact that the risk is limited from the outset should not preclude the qualification of the contract as a concession. This can be the case for instance in sectors with regulated tariffs or where the operating risk is limited by means of contractual arrangements providing for partial compensation including compensation in the event of early termination of the concession for reasons attributable to the contracting authority or contracting entity or for reasons of force majeure”.*

Further clarification is provided in recital 20: *“An operating risk should stem from factors which are outside the control of the parties. Risks such as those linked to bad management, contractual defaults by the economic operator or to instances of force majeure are not decisive for the purpose of classification as a concession, since those risks are inherent in every contract, whether it be a public procurement contract or a concession. An operating risk should be understood as the risk of exposure to the vagaries of the market, which may consist of either a demand risk or a supply risk, or both a demand and supply risk. Demand risk is to be understood as the risk on actual demand for the works*

or services which are the object of the contract. Supply risk is to be understood as the risk on the provision of the works or services which are the object of the contract, in particular the risk that the provision of the services will not match demand. For the purpose of assessment of the operating risk the net present value of all the investment, costs and revenues of the concessionaire should be taken into account in a consistent and uniform manner”.

As mentioned above, “public-private partnerships” (“PPP”) are not defined at Community level². In general, the term refers to forms of cooperation between public authorities and the world of business, which aim to ensure the funding, construction, renovation, management or maintenance of an infrastructure or the provision of a service.

The following elements normally characterise PPPs:

- Relatively long duration of the relationship, involving cooperation between the public partner and the private partner on different aspects of a planned project
- Method of funding the project, in part from the private sector, sometimes by means of complex arrangements between the various players. Nonetheless, public funds - in some cases rather substantial - may be added to the private funds.
- Important role of the economic operator, who participates at different stages in the project (design, completion, implementation, funding). The public partner concentrates primarily on defining the objectives to be attained in terms of public interest, quality of services provided and pricing policy, and it takes responsibility for monitoring compliance with these objectives
- Distribution of risks between the public partner and the private partner, to whom the risks generally borne by the public sector are transferred. However, a PPP does not necessarily mean that the private partner assumes all the risks, or even the major share of the risks linked to the project. The precise distribution of risk is determined case by case, according to the respective ability of the parties concerned to assess, control and cope with this risk.³

In international practice, selection of the form of PPP contract is determined especially by: a) the rights the private entity acquires on the (public) infrastructure (facility), namely exploitation and/or ownership, b) the services provided or the products to be produced, c) the allocation of risk between the authority and the private entity and the selection of the payment mechanism of the private entity as regards capital investment on the facility.

The following forms of PPP are used at international market:

1. Concession model, usage-based or user pay PPPs

In international practice, several variations of this model appear. More specifically, classical form of concession constitutes the BOT contract (Build-Operate-Transfer). Also, the BOOT contract (Build-Own-Operate-Transfer). In this case (of BOOT), if the concessionaire at the end of the contractual period does not transfer the ownership to the public entity (i.e. maintains the ownership of the facility), the model is named BOO (Build-Own-Operate)

2. PFI (private funding initiative) model, availability-based PPPs

² Green Paper on public-private partnerships and Community law on public contracts and concessions /* COM/2004/0327 final */

³ Ibid

3. BT (Build -Transfer) or BOT (Built-operate-transfer)
4. BOL (Build- Own -Lease) or BLOT (Build-Lease-Operate-Transfer)
5. BOM (Build -Own -Maintain) or BRT (Build-Rent-Transfer)
6. Management concession to a vehicle of special purpose
7. Joint Ventures Model (see for the term “joint venture”)

3.2 Concessions Procurement Procedure

Concession contracts are used by public authorities to deliver services or construction/operation of infrastructure. Concessions involve a contractual arrangement between a public authority and an economic operator (the concessionaire). The latter provides services or carries out works and is remunerated by being permitted to exploit the work or service.

Concessions are a particularly attractive way of carrying out projects in the public interest when state or local authorities need to mobilise private capital and know-how to supplement scarce public resources. Transfer of risks to the concessionaire is also an important aspect – few Governments will be popular if drilling for a number of unsuccessful exploration prospects; while an international oil company has a large portfolio of prospects and will lose on some and profit on others.

Concessions have specific features compared to public contracts, which justify a special and more flexible set of rules for their award. Concessions are typically high-value, complex and long-term contracts which require appropriate flexibility during the award procedure to ensure the best possible outcome.

Furthermore, the main elements of the EU concession Directive involve:

- A clearer and precise definition of concession (building on the Court's case law);
- Coverage of works and services concessions both in the utilities sector and in the classic sector (exempting water utility);
- Compulsory publication of concession notices in the Official Journal of the EU, when their value is equal to or greater of a certain amount;
- Adequate solution for dealing with changes to concessions contracts during their term, notably when justified by unforeseen circumstances;
- Establishment of certain obligations with respect to the selection and award criteria to be followed by entities awarding concessions. These rules aim at ensuring that such criteria are published in advance, are objective and non-discriminatory. In general, they are simpler and more flexible than similar provisions currently applicable to public contracts;

The Directive does not provide for a standard mandatory award procedure, but instead establishment of certain general guarantees aimed at ensuring transparency and equal treatment (notably, in case of negotiations);

Public authorities do not have to follow any specific tendering procedure for the award of concessions, contrary to what has been established for public contracts, the present rules do not set out any specific procedure. It will be for Member States to define the applicable procedures for the

award of concessions in observance of general rules concerning selection and award criteria and procedural guarantees. However, public authorities will be obliged to communicate, without any discrimination, to all interested bidders, how they intend to structure the award process.

The Directive on concessions does not impose any specific award criteria. However, it requires award criteria to be **objective, non-discriminatory and related to the subject of the concession**⁴. Contracting authorities may, within these limits, choose the criteria they find most suitable to the award of the concession, notably with reference to the quality of the services or works, their environmental performance or even social considerations.

The Directive requires that award criteria guarantee an overall economic benefit to the public authority and it does not impose the use of the criterion of the lowest price. In practice, given a complex nature of concessions contracts, it is unlikely that the lowest price will be used as a criterion to choose the winning offer. The following sections of the report aim at providing to Contracting Authorities and PPP Units an indicative structured step-by-step plan of a public procurement process from planning to contract implementation. In this respect, provisions of procurement directive (2014/14) are used to some extent and mainly those provisions safeguard transparency and no discrimination during the award process.

3.2.1 Preparation Stage

In general, a competitive tender process carried out in an open, objective and transparent manner should achieve the best value for money in public procurement. Essential principles to be observed in conducting procurement for a public contract include: non-discrimination, equal treatment, transparency, mutual recognition, proportionality⁵.

Preparation as first stage of the process is critical and will influence all future activities of the contract. Depending upon the size and complexity of the contract, this stage of the process might take months before the contract notice is due to be published. Good planning should minimise the risk of needing contract modifications or variations. The biggest (and probably most costly) and most common errors on contracts result from inadequate planning. A feasibility study and screening stage, public awareness and public consultations are to be considered⁶.

Planning is crucial. If the Contracting Authority (CA) gets this part of the process wrong, mistakes and problems will most likely follow. Many errors can be traced back to inadequate planning.

Project Management

Project organisation and resources: All contracts of any size or complexity will require as a minimum a procurement officer who may also be the contract/project manager or may be a specialist brought into the team to manage specific processes (which is recommended on high value, complex, or risky contracts). Roles and responsibilities during the procurement process should be clearly defined by the CA. Depending on the planned number and complexity of contracts, external specialist advisors on

⁴ see also Sigma Brief 31 Public Procurement 2014 EU Directives: Concessions pages 9-10.

⁵ European Commission. Guidance for Practitioners of the avoidance of common errors in ESI projects (structural funds) 2014

⁶ European Commission. Guidance for Practitioners of the avoidance of common errors in ESI projects (structural funds) 2014

certain aspects of procurement, such as legal matters, may need to be brought into the team⁷. In many cases a project group of highly professional officials supported with external consultants are established. The project group normally includes experts within economics, finance, legislation and technical expertise (engineers, geologists etc).

Human resources: The right profile of people should be available to be part of the Evaluation Committee from the CA, as well as people with project management, procurement, legal, finance, technical, audit and other skills. It is important to be decided who will be the person to take ultimate responsibility for key decisions. If the contract is complex or high cost risk consideration should be given to setting up a Steering Committee to oversee the contract. The Steering Committee would approve all key decisions and would typically be comprised of people not involved with the actual delivery of the contract.

Evaluation Committee: It is a best practice to establish the Evaluation Committee as soon as the decision has been taken to proceed with the procurement to ensure that the procurement process is done in the most professional way by involving all the necessary staff qualifications from the start. The Committee needs to have a permanent core of members. Procurement, financial and legal persons should be permanent members. Technical staff may become members depending on the type of contract. The members of the Committee should ideally be experienced in each of the areas to be examined in the tender. Decisions should be based purely on the criteria published and be demonstrably free from political and any other undue influence. The work of the Evaluation Committee must be recorded (at least the summary of the meeting minutes)⁸. It is recommended to draw on the expertise of the PPP Unit to avoid any mistakes in the procedures.

Conflicts of interest: A conflict of interest exists where the impartial exercise of the functions of a person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient. Best practices are:

Each member of the Evaluation Committee signs a conflict of interest Declaration Form. Anyone with a potential conflict of interest should not play any role in the procurement;

At the start of the procurement process, the Evaluation Committee should be asked to declare any actual or potential conflict of interest. Those declarations should be recorded and kept on the contract file.

“Tenderers are asked to declare any conflict of interest (also any conflict of interest with tenderers’ relatives) when submitting their tenders. This declaration is a minimum requirement set in the tender documents”⁹.

Tender Documents: For the performance of tender procedures, the Evaluation Committee should also draft the tender documents based on the standard concession/PPP documents published by the PPP Unit. Throughout this phase, the Committee continues to be assisted by the PPP Unit in the drafting and approval of the standard tender documents.

⁷ ibidem

⁸ ibidem

⁹ ibidem

Documentation and record keeping: Documenting the entire procurement process and justifying all key decisions is a critical requirement to ensure that the procedure can be subsequently verified or audited. The systems for recording information can be manual or electronic or mixed, but the trend is towards fully electronic processing and storage in such a way that ensures transparency of decision-making. The CA should maintain a record of its procurement proceedings and all associated documentation covering all documents from all participants of the procedure.

Contingency Planning

The contract/project manager should ensure that a contingency plan is prepared during early stages of the contract lifecycle and that the plan includes a risk register. The plan should set out the arrangements that need to be put in place should the project be aborted, not be completed on time or fail during the implementation stage, and the actions required to activate the plan.

Selection of Procedure

The decision concerning which procedure to use is a critical and strategic one affecting the whole procurement process. The decision should be made and justified at the planning stage. Four options are mentioned below¹⁰.

¹⁰ ■ Contracting authorities may apply open or restricted procedures (Art 26 (2) Dir 2014/24).

■ Contracting authorities may apply a competitive procedure with negotiation or a competitive dialogue in the following situations:

• with regard to works, supplies or services fulfilling one or more of the following criteria (Art 26 (4) Dir 2014/24):

◦ *the needs of the contracting authority cannot be met without adaptation of readily available solutions;*

◦ *they include design or innovative solutions;*

◦ *the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them;*

◦ *the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference within the meaning of points 2 to 5 of Annex VII;*

• with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted. In such situations contracting authorities shall not be required to publish a contract notice where they include in the procedure all of, and only, the tenderers which satisfy the criteria for qualitative selection and which, during the prior open or restricted procedure, submitted tenders in accordance with the formal requirements of the procurement procedure (Art 26 (4) (b) Dir 2014/24).

■ In the utility services sector the use of the negotiated procedure with prior call for competition is always possible (Art 44 (2) Dir 2014/25).

■ In the specific cases and circumstances mentioned below, Member States may provide that contracting authorities may award public contracts by a negotiated procedure without prior publication.

The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases (Art 32 (2) Dir 2014/24):

• *where no (suitable) tenders or no (suitable) requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission, where it so requests*

• *where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons, when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement: ◦ the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;*

◦ *competition is absent for technical reasons;*

◦ *the protection of exclusive rights, including intellectual property rights;*

Open: This is a process whereby all providers interested in the contract and who have responded to an advertisement can submit tenders. All such tenders must be considered without any prior selection process. The selection and evaluation are carried out after the submission of the tenders.

Restricted: This is a two-stage process where only those providers who have been invited may submit tenders. The selection and shortlisting are usually carried out based on a Pre-Qualification Questionnaire (PQQ). The minimum may be two candidates. The CA may impose a limit on the maximum number for a given procedure.

Although this procedure involves less competition, it gives the possibility to restrict participation only to market operators with high level of specialisation. In case of energy PPP for which preparing a tender involves significant costs, limiting the number of tenderers through prequalification can make the tender more attractive as the chance to win the tender is higher for pre-qualified tenderers than in an open procedure.

Competitive procedure with negotiation: Under the Competitive Procedure with Negotiation, any economic operator may request to participate in the process. The contracting authority makes an initial evaluation of the candidates based upon the grounds of exclusion and the selection criteria published in the contract notice. It may limit the number of suitable candidates to be invited to participate in the procedure. The contracting authority then invites the chosen economic operators to submit initial tenders¹¹.

•if it is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not, in any event, be attributable to the contracting authority.

The negotiated procedure without prior publication may be used for public supply contracts (Art 32 (3) Dir 2014/24):

- where the products involved are manufactured purely for the purpose of research, experimentation, study or development; however, contracts awarded pursuant to this point shall not include quantity production to establish commercial viability or to recover research and development costs;*
- for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts as well as that of recurrent contracts shall not, as a general rule, exceed three years;*
- for supplies quoted and purchased on a commodity market;*
- for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.*

The negotiated procedure without prior publication may be used for public service contracts, where the contract concerned follows a design contest and is to be awarded, under the rules provided for in the design contest, to the winner or one of the winners of the design contest; in the latter case, all winners must be invited to participate in the negotiations.

•In the sector area there are certain modifications and additions to this (Art 50 Dir 2014/25).

•Contracting authorities may apply “innovation partnerships” as a new procurement process for the procurement of innovative products, services or products that cannot be met by conventional solutions on the market (Art 26 (3) and Art 31 (1) Dir 2014/24; Art 44 (3) and Art 49 (1) Dir 2014/25).

•Dir 2014/23 on the award of concession contracts applies to the award of works or service concessions (as defined in Art 5 (1) Dir 2014/23) to economic operators (Art 1 (2) Dir 2014/23).

¹¹ EPEC- PPPs and Procurement: the New Directives (2016)

The contracting authority shall negotiate with tenderers the initial and all subsequent tenders submitted, except for the final tender, to improve their content. The minimum requirements and the award criteria shall not be subject to negotiation.

When the contracting authority intends to conclude the negotiations, it shall inform the remaining tenderers and set a common deadline to submit any new or revised tenders, verify that the final tenders are in conformity with the minimum requirements and award the contract based on the pre-published award criteria.

Competitive dialogue procedure: Under this procedure, after final tenders have been submitted, tenders can still be clarified, specified and optimised at the request of the contracting authority"... *provided this does not... "involve changes to the essential aspects of the tender or of the public procurement, including the needs and requirements set out in the contract notice or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect."* (article 30 of 2014/24EU). The competitive dialogue procedure then goes further in allowing further clarification and improvement once the winning bidder has been appointed. *"At the request of the contracting authority, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio....may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract provided this does not have the effect of materially modifying essential aspects of the tender or of the public procurement, including the needs and requirements as set out in the contract notice or in the descriptive document and does not risk distorting competition or causing discrimination."* (Article 30(7) of 2014/24EU).

Note: The Concession Directive sets-out some basic rules to encourage more transparency to the procurement of concessions (e.g. by requiring their prior advertisement and by limiting their length). However, it is not as prescriptive or broad in scope as the Public Procurement Directive (2014/24 EU), in that there are no compulsory procedures. The Concession Directive introduces (or clarifies) a regime which is more flexible and less procedurally prescriptive than that in place for standard public procurements. It does not mandate procedures, such as competitive dialogue, but merely sets-out broad principles, highlighting, for instance, the possibility of negotiation for complex projects. According to article 37 (6) of 2014/23 EU *"The contracting authority...may negotiate with candidates and tenderers. The subject-matter of the concession, the award criteria and the minimum requirements shall not be changed during the negotiations"*.

This approach offers CAs greater flexibility in the way that they conduct their PPP procurements if they are seen as falling within the scope of the Concession Directive rather than the new Public Procurement Directive. This could be beneficial for CAs, particularly in mature PPP markets, that are comfortable shaping their own procedures through negotiation based on previous experience and established models and contract documentation. The issue for consideration in less mature PPP countries is that the lack of detailed procedural rules may increase the risk of CAs inadvertently failing to adhere to general principles, such as equal treatment and transparency, in the procurement process¹².

¹² ibidem

Local and regional authorities can advertise their contracts via less burdensome and shorter prior-information notices (instead of the more complex contract notices). They can also agree with the pre-selected bidders on the deadlines in their procedures.

CREATING A CULTURE OF INTEGRITY AND FAIR PLAY

National legal framework should set the proper framework for prior publication of tenders, clear and unbiased technical specifications, equal treatment of bidders in all stages of the process, and objective evaluation of tenders.

1. The notion of “conflicts of interest” should be defined in the legal framework, as it will make it easier to identify and manage fraud and conflict of interest cases. This will make it easier for countries and CAs to effectively prevent, identify and remedy cases.
2. CAs must ensure that the participation of a previously consulted company does not affect competition within the tender procedure and that any information shared with a company as a result of its prior involvement must be sent to the other participating companies as well.
3. A company can be excluded from public procurement procedures if it unduly influenced the decision-making process or made false statements and when convicted for fraud and corruption.
4. Since the post-award period is particularly vulnerable to corruption, the rules for modifying contracts during this term have been clarified and simplified to remove doubts. In particular, a new call for tenders will not be required where the modifications have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses and the changes are not substantive, i.e. the nature or the economic balance of the contract should not be changed

3.2.2 Publication

It is fundamental that all PPP/concession contracts above a certain threshold value should be published in a standard format in an Official Public Procurement/Concession Bulletin, where procurements are published (hereinafter referred to as the “Official Bulletin”), so that economic operators internationally have the possibility to tender for contracts for which they consider they can meet the requirements.

Prior Information Notice (PIN): The publication of a PIN may not be mandatory. However, by publishing a PIN at the beginning of the year it is possible to take advantage of reduced time limits for submission of tenders. PIN may be introduced so that CAs could inform the market of all its upcoming contracts, for example in the next six months or next year. A PIN for the following year can be announced in November/December for the year ahead but *“must be published at least 50 days and no longer than 12 months before publication of the specific contract”*¹³.

Contract Notice (CN): If the procurement is above the threshold provided by the legislation, it is mandatory to publish a CN. Once the notice is published, material changes to the main content, such

¹³ European Commission. Guidance for Practitioners of the avoidance of common errors in ESI projects (structural funds) (2014)

as the technical product requirements, time schedules, selection and awarding criteria and contract terms, in principle cannot be amended - otherwise a cancellation of the tender procedure is required. It is critical that the content of these notices is accurate (and follows the specification requirements). If any minor changes occur in the tender phase it is mandatory to publish the changes in the Bulletin and it is recommended to extend the deadline for submission of the tender.

CN should contain specific information including the name, address and type of contracting authority or entity, the main activity exercised, a description of the concession, conditions of participation, and time limit for the submission of applications or receipt of tenders. It is advisable that CA uses standard forms for concession notices, which are to be transmitted electronically for publication in the Official Bulletin. Furthermore, CA should be obliged to offer, by electronic means and free of charge, unrestricted and direct access to concession documents.

Additional Notices: The market should always be informed if any changes are made in the documents and the notices (for example date for receipt of tenders) by publication of a further notice (and additionally by informing all those that have expressed an interest in the contract).¹⁴ If the CA makes material changes in the technical specification, selection/award criteria and/or contract terms, a cancellation of the process will be necessary¹⁵.

Minimum Time Limits: A minimum of 60 days should be allowed as from the date on which the notice was released to receipt of tenders. This period can be reduced by 12 days in total if the CN is transmitted electronically and the CA offers full electronic access to the documents (i.e. 48 days). The period can be reduced to 36 days from the date of the CN release if a PIN has been published within a minimum of 52 days and a maximum of 12 months before the date upon which the CN was despatched. If the notices are released electronically, the PIN must contain as much information as the CN, when that information was available at the time (for instance contract volume, selection and award criteria and contract duration). All responses to questions from tenderers must be anonymised and sent out to all interested parties at the latest 6 days before the tender submission deadline. **Clarifications provided to tenderers should not have the effect of changing the initial specification (including the initial selection and award criteria).** To ensure full transparency prior to the deadline for submission of tenders, all clarifications should be published on the web-site of the contracting authority so that they are available to all potential tenderers¹⁶.

*When an award has been made a contract award notice must be sent **within 48 days** of the award to the Bulletin for publication¹⁷.*

The timetable and steps of the Restricted Procedure are as follows:

¹⁴ ibidem

¹⁵ Directive 2014/24/EU distinguishes between material modification and the alteration of the overall nature of the contract (See Component 1 report page....).

¹⁶ European Commission. Guidance for Practitioners of the avoidance of common errors in ESI projects (structural funds) (2014)

¹⁷ ibidem

- Allow a minimum of 50 days (this can be reduced to 40 days if an electronic notice is given) from the date on which the notice was dispatched to the date by which requests to participate must be received.
- *If the CA wishes to limit the number of tenderers under this procedure the number must be a minimum of two. The CA is however not obliged to specify a limit if it does not intend to apply one*¹⁸.
- The CA must then select those who will be invited to tender based on a Prequalification Questionnaire (PQQ).
- Written invitations to tender must then be issued to those selected allowing a minimum of 40 days from despatch of the invitations for receipt of tenders. This period can be reduced to 356 days if there is full electronic access to tender documents.
- *If a PIN has been published electronically within a minimum of 52 days, and a maximum of 12 months before the date on which the CN was dispatched, the deadline for submission of tender can be reduced to 31 days. The PIN must contain as much information as the CN where that information was available at the time (for instance contract volume, awarding criteria and contract period)*¹⁹.
- All responses to questions from tenderers must be anonymised and sent out to all interested parties at the latest six (6) days before tender deadline.

When an award has been made a Contract Award Notice must be sent within 48 days of the award to the Bulletin for publication.

Tender documents: As well as containing the usual information (price, delivery, tender submission date etc.) the tender documents should also specify the following information:

- a reference to the published CN;
- further elaboration of the criteria for selection and award of the contract which are set out in the CN;
- the language in which the tender is to be drawn up;
- the draft contract.

Determining selection criteria: As mentioned above, it is important that the CA makes *decisions on the selection process early, at procurement planning stage ideally, but in any event before any notice is issued. Also, the selection methodology must be tested at that stage. The aim is to award the contract to a tenderer who can deliver it. The methodology for selection of tenderers must be transparent. It is recommended that a pre-agreed scoring mechanism is established which will be transparent to any objectors. The CA may want to obtain assurance about financial, technical and managerial capacity, health and safety, environmental issues or social criteria*²⁰. The information the CA seeks at this stage must be proportionate and relevant to the subject matter of the contract. For example, insurance and

¹⁸ ibidem

¹⁹ ibidem

²⁰ ibid

financial requirements should not be set at unreasonably high levels with the effect of automatically eliminating otherwise perfectly competent applicants or (more commonly) should not be set without any real thought as to the effect of the levels. All selection criteria must be proportionate and relevant to assessing the ability of the tenderer to deliver the contract. Economic operators that have been subject of a conviction by final judgment for specifically mentioned crimes, such as fraud, corruption or participation in a criminal organisation, should be excluded from the procedure.

Material changes of the selection criteria once set are not acceptable. After publication, only minor changes within the main selection criteria are acceptable, such as changes in the wording or the address for submission of application. Changes in requirements such as the financial standing (yearly revenue or equity rate) are considered material changes and they require an extension of the application deadline or a cancellation.

The selection stage (and selection criteria) with the evaluation stage (award criteria) are usually mixed up. Actually, there are two parts to the procurement process - selection (of tenderers) and evaluation (of the tenders). They are quite distinct and should not to be confused. At the selection stage the aim is to select those tenderers capable of performing the task. The evaluation stage assesses the best tender received from the selected tenderers. It is strongly recommended to establish appropriate selection and award criteria at the procurement planning stage.

Setting up a Pre-Qualification Questionnaire (PQQ): As mentioned above, if it is intended *under the restricted or negotiated procedures to have a shortlist of tenderers, then this must be done by fair and transparent means (and documented) ensuring equal treatment to all. Information from tenderers that will be used for selection can be obtained in a standard format via a PQQ. A PQQ can cover questions and requirements of documentation for all selection criteria.*

Checks should be made to ensure that a given PQQ does not conflict with any of the rules relating to transparency and equal treatment. The CN should always state in the Bulletin and/or the tender documents that one of the selection criteria will be the information supplied by the applicant in a PQQ. This allows for the information provided in the PQQ to be considered. If a scoring system or weightings are being used, these should be disclosed fully in the CN and in the tender documents. Standard questionnaires (PQQs) should be obtainable from either the CA's corporate procurement function or from the national procurement office²¹.

Setting up award criteria and their weightings: Concessions must be awarded on the basis of objective award criteria, linked to the subject matter of the concession and in compliance with the general principles of equal treatment, non-discrimination and proportionality. The award criteria are to be listed in descending order of importance and disclosed in advance to all tenderers

Evaluation of the submitted tenders is a critical part of the procurement process and for this reason care must be taken to ensure that the outcome is the right one and that it has been decided in a fair and transparent manner. The criteria for the awarding of contracts are either:

- the lowest price only; or
- the most economically advantageous tender (MEAT).

²¹ *ibid*

If the MEAT method is used, either the CN or contract documents must detail all criteria to be used. *A best practice would be to disclose in the tender notice or tender documents the scoring matrix or weightings being used in addition to the evaluation methodology²².*

Note: According to Concessions Directive, concessions shall be awarded on the basis of objective criteria (Not necessarily purely economic) that comply with the principles set out in Article 3 and ensure that tenders are assessed in conditions of effective competition to identify an overall economic advantage for the contracting authority or the contracting entity. However, the award criteria shall be linked to the subject matter of the concession, and shall not confer an unrestricted freedom of choice on the CA. They may include, inter alia, environmental, social or innovation-related criteria. Those criteria shall be accompanied by requirements, that allow for an effective verification OF the information provided by the tenderers. The CA shall verify whether tenders properly meet the award criteria. Those criteria may not be subject to the criterion of most economically advantageous tender (MEAT) if the latter includes a less important part of the evaluation factors

Tender evaluation should:

- be relevant to the subject matter of the contract;
- have award criteria that are weighted to reflect importance/priority and are focused on the requirements of the specification (no weighting by lowest price)
- be based on a model that takes into account a balance between price and quality, where price is the dominant criterion in %. Care must be taken to ensure that the price/quality split reflects the requirements of the contract;
- *use an Evaluation Committee encompassing appropriate and relevant representation having the necessary experience, technical skills and knowledge²³.*

The relevant professional expertise needs to be available within the Evaluation Committee or alternatively other qualified staff from the CA can be used as non-voting advisors. The adoption of the award criteria appropriate to a particular contract should be given serious consideration at the procurement planning stage.

The contract: A draft contract should be attached to the tender documents so that all tenderers can tender on the same basis. In the open and restricted procedure, no negotiation should take place on the details of the contract after the successful tender has been decided (to do so would breach the equal treatment principle)²⁴. The tender documents including annexes and the proposals of the successful tenderer for their fulfilment must be transferred into the final contract according to which the contract is carried out.

The contract should contain provisions for dispute resolution mechanisms. Mediation solutions should always be considered. Standard pro forma contracts will often contain clause options for dispute settlement (and many other issues that the CA initially may not have considered, such as intellectual property rights).

²² ibid

²³ ibid

²⁴ ibid

Specification drafting: The specification is the most important document in the tender process. It should describe the service/work to be provided, the levels, standards and inputs together with the outputs or outcomes required. When drafting the specification, the fact that it has a direct influence on cost must not be forgotten.

A well-prepared specification should:

- be precise in the way it describes the requirements;
- have clearly defined, achievable and measurable inputs, outputs and outcomes;
- not mention any brand names or requirements which limit competition (or if brands are mentioned, include the term 'or equivalent'), reference to international standards is an option;
- provide sufficiently detailed information that allows tenderers to submit realistic tenders²⁵;
- be drafted by persons with sufficient expertise whether from the CA or using outside expertise;
- be approved by the Evaluation Committee and/or the CA's senior management depending on the relevant internal rules;

Weak drafting of the specification is often a cause of subsequent contract modifications due to the fact that it has not reflected the true extent of the proposed contract. If a significant amount of 'extra' work is added to the contract (by way of modifications/variations) once the contract is signed, it inflates both the size and cost of the contract compared to that originally envisaged. It is advisable that the CA prioritises each project and provides enough time to consider all issues and risks by involving, if necessary, in-house or external expertise to design the specification and the contract.

Note: The Concession Directive does not lay down any detailed rules on technical specifications. It merely sets out a general requirement to define and disclose "*technical and functional requirements*". However, it prohibits any references to specific makes, sources, processes or patents, unless this is justified by the subject matter accompanied by the words "*or equivalent*". *Reference to international standards could be the solution.*

3.2.3 *Submission of tenders and selection of tenderers*

Delivery of the tenders: The time and place for delivery of submission of tenders are fixed in the tender notice. The tender invitation should clearly state the place (name, address, room or office number) where tenders are to be delivered and that no tenders will be considered that have been delivered other than as instructed. It is the tenderer's responsibility to ensure delivery in accordance with the invitation to tender. Tenderers should be told that tender envelopes should bear markings of the name of the sender, the name, address, room or office number of the CA and the following text: "*This envelope must only be opened by procurement officer (name)*"²⁶.

Obtaining and submitting tenders: The CA must allow tenderers a reasonable time both to obtain the tender documents and submit a tender – at least respecting the minimum time of 60 days. The directive for oil and gas concessions requires at least 90 days.

²⁵ *ibid*

²⁶ *ibid*

The minimum deadlines may be extended if necessary e.g. because of a complex subject matter of the contract. A fee may be charged to obtain tender documents, but this should not be disproportionate. *Best practice is that the tender documents are available for free and downloadable from web-sites. Tenders must be submitted in writing, by the method set out in the tender documents, in person or by post. In the case of electronic tendering, certain safeguards should be put into place relating to confidentiality and acknowledgement of receipt. E-signatures must also be accepted²⁷.* The timetable should consider the complexity of the contract. **In particular, for complex, design/build or public private partnership (PPP) contracts, it is not uncommon to have tender preparation periods in the range of four (4) to six (6) months.**

Observance of tendering instructions: The first task of the Evaluation Committee is to check all tenders to ensure that they are 'compliant', in other words that they have followed the instructions to tenderers to the letter. If they have not, they should immediately be rejected as non-compliant and an explanation given to the tenderer as to why it has been rejected. A rejection and its reason(s) must be recorded.

Safe keeping of tender documents: The contracting authority should ensure that it has a system in place to keep tender submissions confidential and (also if electronically submitted) in safe custody. It is also advisable for CAs to issue receipts for tenders delivered in person. Best practice is that the CA establishes a list of the incoming tenders (number, time) and issues a receipt to the tenderer for confirmation of the tender.

Opening ceremony: CAs usually have a formal opening ceremony for tenders which is recommended as good practice. *At least two persons of the Evaluation Committee should be present to record the tender details.*²⁸ Audience can be invited/admitted. All non-compliant tenders must be rejected.

Selection, minimum requirements and additional documentation: If a tender does not fulfil the selection/minimum requirements it tender must be rejected. At this stage, the CA can only ask bidders to confirm information or to clarify contradictory information, for instance if some information is written unclearly or is clearly wrong. The contracting authority may invite economic operators to supplement or clarify the certificates and documents submitted. The contracting authority may use its discretion and request supplementary information from tenderers to ensure maximum competition, provided the additional information does not have the effect of changing the tender offer. For example, a contracting authority could ask for a particular document (e.g. an existing certificate) which the tenderer had overlooked enclosing with its offer. However, once it does so, it is obliged to treat all tenderers equally. i.e. it has to ask for additional documentation from all tenderers whose documents need to be supplemented. Clarifications are not to be understood as negotiations. *Accidental calculation, arithmetic errors, spelling mistakes or typos will be accepted as supplements or clarifications. Material alteration or modifications of the tender is not allowed*²⁹. Following its assessment of any additional information so requested, the Evaluation Committee should then proceed to evaluate all the compliant tenders

²⁷ ibid

²⁸ ibid

²⁹ ibid

3.2.4 Evaluation of tenders

The purpose of this stage is to determine the winning tenderer by strictly applying the published award criteria.

The award criteria or evaluation methodology should never be amended midway through the procurement process.

Lowest price: At the procurement planning stage, the CA will have taken a decision as to which evaluation method to follow and this should be clear in both the CN and tender documentation. If the lowest price is chosen, then this is the most transparent (and it is hard for tenderers to argue against the decision as a result). However, quality is taken into account only by the quality minimum requirements stated in the specifications. Thus, lowest price is advisable on the condition that the technical specifications can be fixed upfront by the CA and, therefore, must be the same in all proposals.

Most economically advantageous tender (MEAT): MEAT is increasingly becoming the most popular evaluation method as contracting authorities become more skilled in its application. CAs need to have the capabilities to carry out an evaluation based on price and quality, technical merits and functional characteristics; and the tenderers equally need to understand how to prepare a tender on that basis. The prior fixing of technical specifications, the checking of proposals against those criteria, and the evaluation of offers based on price and quality necessitate high levels of technical competence.³⁰ If the CA does not possess those skills then training is required as well as support from experts' independent of any tenderers. In an evaluation based on MEAT it is possible (indeed it is to be encouraged where relevant) to include criteria relating to environmental and/or social issues as well as operating costs.

Setting MEAT criteria for a complex contract requires considerable technical skills and CAs may need to seek external expert advice. Technical advisors can also be used as non-voting members of Evaluation Committees, but it is important that they do not have any conflict of interest vis-à-vis potential bidders.

If MEAT is to be used, details of all the criteria (as well as the proposed evaluation methodology) must be included - in order of importance - in either the CN or the tender documents or both.

Clarifications: In carrying out an open or restricted procedure it is possible for the CA to seek clarifications from tenderers on aspects of their tenders. However, it is not possible to carry out negotiations on those tenders. These requests can only have the character of minor clarification of information already submitted by the tenderer. In certain circumstances, there is an obligation for the CA to ask the tenderer to clarify or complete submitted documents. This obligation applies when the text of the tenderer is vague or unclear and circumstances of which the contracting authority is aware, suggest that this ambiguity can be easily explained or eliminated. In that case, proceeding of the CA that would lead into exclusion of the tenderer without prior request for clarification or submission of additional documents would contradict the good governance principle. The CA must treat the various tenderers equally and fairly, in such a way that a request for clarification cannot appear to have favoured or disadvantaged the tenderer or tenderers to which the request was addressed.

Clarifications should not have the effect of changing the already submitted tender in relation to substantial information such as pricing, quality and service elements. All communication with tenderers must be fully documented.

³⁰ *ibid*

Post tender negotiations: According to EU legislation, in a restricted or open procedure no negotiations are allowed, and the procurement officer must take care not to negotiate the terms of the contract with the tenderers as any changes could invalidate the evaluation process. *If the tenders contain a clearly arithmetical error in the tender price the CA may contact the tenderer to clarify and correct the tender price.*³¹

How the Evaluation Committee should reach its decision: The Evaluation Committee must only score the tender submissions on the information contained in them and any clarifications received. Any other information that Committee members may already have received, including personal experience, should not be considered.

Each Evaluation Committee member must initiate, conduct, and complete an individual evaluation of each tender. The evaluations will be summarised, and consensus score reached for the Committee as a whole. Members of the Committee will not always reach at the same conclusions. In such cases, the Committee should discuss any individual differences as far as possible. The resulting discussions may bring consensus, or each member may retain his/her independent thinking in his/her rating which would then be averaged with the other evaluations. Insofar as these methods produce an unacceptable result to any member, he/she may, at his/her option, request this to be noted in the final report. Where such differences are matters of fact, and cannot be resolved by consensus, the Committee Chair shall rule and record such events and rulings.

Evaluation Committee decision: The chair of the Evaluation Committee must arrange for the tender evaluation results decided by the Evaluation Committee to be presented to the Steering Committee (if such a Committee is established). A full and comprehensive report on the process and outcome of the Evaluation Committee deliberations must be recorded and kept on the contract file. Tender evaluation reports should be clear and sufficiently detailed to demonstrate how the decision to award the contract was taken.

3.2.5 Award

Award notice: When the CA has decided to whom the contract should be awarded all tenderers must be informed of the result. Assuming no complaint has been filed the contract can be signed. Within 48 days after the contract signature the CA must send a contract award notice to the Bulletin for publication³².

An appeal clause should be provided against unlawful contract award decisions, discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or any other document related to the contract award procedure

Note: Remedies that are provided during the various stages of the procedure have to be included in the national legislation.

*At any time, a CA may decide to cancel a tendering procedure with justification. If the tender is cancelled this should be notified to every tenderer. Best practice is to include information about the time schedule for re-tendering in the notice*³³.

³¹ ibid

³² ibid

³³ ibid

As soon as a contract has been awarded, the CA must keep and file all documents covering the tender evaluation stage, including all tenders received and the report of the Evaluation Committee.

General principles and procedural guarantees for the awarding of a concessions contract

The CAs should be free to structure the procedure according to national standards or their own preferences, provided that it follows certain basic rules such as:

1. Publishing a concession notice in the Official Bulletin, including a description of the concession and the conditions of participating in the concession award procedure (the minimum turnover, availability of a specific kind and quantity of machinery, experience with specific kinds of work or services, etc.)
2. Informing potential and actual participants to the procedure of the minimum requirements and the award criteria (fees to be paid by users, etc.)
3. Respecting established requirements and eliminating candidates who do not fulfil them
4. Excluding candidates who have been convicted of certain crimes, such as fraud and money laundering.
5. Providing all participants with a description of how the procedure will be organised and an indicative timetable.
6. Using award criteria that ensures the equal treatment of all participants. In other words, criteria should be non-discriminatory, meaning that they cannot aim at or result in favouring local or national products or companies; be linked to the subject matter of the concession; be objective; and be advertised in advance and listed in descending order of importance.
7. The CA may negotiate with candidates and tenderers. However, certain elements of the initial call for tender, the concession's subject matter, the award criteria and the minimum requirements, cannot be changed during the procedure. The CA has to ensure that all stages of the procedure are recorded.

3.2.6 Subcontracting and modifications of the contract during its term

CA should ask a tenderer to indicate any share of the concession that it may intend to subcontract and any proposed subcontractors. The concessionaire is required to provide information concerning the subcontractors (name, contact details, legal representative) and of any changes in subcontractors working at a facility under the direct oversight of the contracting authority. This requirement, which applies for works concessions and services concessions, must be fulfilled following the award of the contract and at the latest at the beginning of the execution of the contract. CA may be granted discretion to extend these requirements, for example to subcontractors further down the subcontracting chain (as regards Concession Directive article 41 see Component 1 report).

The following circumstances are recommended to be provided by national law, in which the modification of a concession contract is allowed without having to undertake a new concession award procedure³⁴:

- Modifications, irrespective of their monetary value, have been provided for in the initial concession documents in clear, precise, and unequivocal review clauses, which may include value revision clauses or options.
- Additional works or services by the original concessionaire, which were not included in the initial concession, have become necessary, but a change of concessionaire cannot be made due to

³⁴ Article 43 of Concession Directive

either (i) economic or technical reasons (such as requirements of interchangeability or interoperability with existing equipment or services); or (ii) the significant inconvenience or substantial duplication of costs that such a change would cause for the CA, subject to the condition that any increase in value must not exceed 50% of the value of the initial concession (where several successive modifications are made, that limitation applies to the value of each modification).

- The required modification (i) has been brought about by external circumstances that a diligent CA could not foresee; (ii) does not alter the overall nature of the concession; and (iii) involves an increase in value that does not exceed 50% of the value of the initial concession (where several successive modifications are made, that limitation applies to the value of each modification).
- A new concessionaire is replacing the initial concessionaire as a consequence of (i) an unequivocal, precise and clear review clause or option; or (ii) a universal or partial succession into the position of the initial concessionaire; or (iii) the assumption by the contracting authority itself of the concessionaire's obligations towards its subcontractors.
- The modifications are insubstantial.
- The value of the modification is below both of the following values: the threshold for concessions and 10% of the value of the initial concession

3.2.7 Contract implementation

The purpose of the process is to ensure that the contract is satisfactorily implemented in accordance with the outcome of the tender process.

Contract modifications: With good planning, a comprehensive, robust specification, and a well-designed contract prepared by a diligent CA, the need for any contract modifications during the implementation stage could be minimised.

See Component 1 Report (3.1.1.) Modification of concession contracts during their term.

3.3 Drafting of the Contract

Following completion of the tendering process, the contract is the basic document upon which shall be regulated the long-term relationships between parties involved in the project implementation. Thus, while drafting contracts, CA should ensure that the text of the contract is as clear and understandable as possible to create certainty for parties.

The content of the contract:

As regards the content and provisions of the contract, hereinafter are identified some of the main elements that must be part of the contract.

Part of the contract's content must be provisions that determine at least the following elements:

- i. The general provisions of the contract – object, implementation method, definitions;
- ii. The commencement and duration of the contract;
- iii. Rights and obligations of the parties;

- iv. Allocation of Risk;
- v. General Terms relating to Works/ Services – including such as objectives and performance standards, required for the performance of works or services by the private partner;
- vi. Remuneration mechanisms of the private partner including the terms and payment modalities;
- vii. Sanctions and penalties that may be imposed in case of breach by the parties;
- viii. The Contract Guarantee (Performance Bond);
- ix. Amendments – Reasons and procedures for which amendments related to the contract are permitted in the future;
- x. Early termination causes that- justify the early termination of the contract and related procedures to be applied in such cases;
- xi. Step in rights of creditors and the contracting authority;
- xii. Movable and immovable property related issues;
- xiii. Dispute resolution mechanisms;
- xiv. The procedure to be performed at the contract termination, including the hand-over of assets, final verifications and eventual payments (Hand –over and Disengagement)
- xv. Contract management mechanisms;
- xvi. Monitoring mechanisms.

Legal Documents

Directive 2014/23/EU

Directive 2014/24/EU

References

EPEC-PPPs and Procurement April 2016.

Sigma Brief 31 Public Procurement 2014 EU Directives: Concessions.

EPEC-Procurement of PPP and the use of Competitive Dialogue in Europe.

World Bank Group Public Private-Partnerships Reference Guide.

Procurement Assessment Guide.

4 OIL AND NATURAL GAS MODEL CONTRACT

TABLE OF CONTENTS

ARTICLE 1 SCOPE OF THE AGREEMENT

ARTICLE 2 EXPLORATION DURATION OF THE EXPLORATION STAGE

ARTICLE 3 LESSEE'S EXPLORATION WORK COMMITMENTS

ARTICLE 4 TECHNICAL ADVISORY COMMITTEE

ARTICLE 5 ANNUAL WORK PROGRAMME AND BUDGET

ARTICLE 6 SURRENDER DURING THE EXPLORATION PERIOD - RELINQUISHMENT

ARTICLE 7 DISCOVERY: EXPLOITATION STAGE

ARTICLE 8 DURATION AND EXPIRATION OF THE EXPLOITATION PERIOD - RELINQUISHMENT

ARTICLE 9 CONDUCT OF PETROLEUM OPERATIONS IN THE CONTRACT AREA - OBLIGATIONS OF THE LESSEE

ARTICLE 10 CONDUCT OF PETROLEUM OPERATIONS IN THE CONTRACT AREA RIGHTS OF THE LESSEE

ARTICLE 11 UNITISATION

ARTICLE 12 ENVIRONMENTAL PROTECTION

ARTICLE 13 ROYALTIES

ARTICLE 14 TAXATION

ARTICLE 15 FEES AND BONUSES

ARTICLE 16 VALUATION OF HYDROCARBONS

ARTICLE 17 MEASUREMENT OF HYDROCARBONS AND BY-PRODUCTS

ARTICLE 18 SATISFACTION OF DOMESTIC REQUIREMENTS

ARTICLE 19 RECORDS, REPORTS AND DATA INSPECTIONS

ARTICLE 20 TRANSFER AND ASSIGNMENT OF RIGHTS AND OBLIGATIONS

ARTICLE 21 VIOLATIONS, LESSEE'S FORFEITURE

ARTICLE 22 INSOLVENCY OF THE LESSEE

ARTICLE 23 SETTLEMENT OF DISPUTES

ARTICLE 24 PERFORMANCE OF THE AGREEMENT - TIME

ARTICLE 25 CONTRACTORS, SUB-CONTRACTORS, PERSONNEL AND TRAINING

ARTICLE 26 FORCE MAJEURE

ARTICLE 27 SUSPENSION OF THE EXPLORATION STAGE

ARTICLE 28 NOTIFICATIONS - AGENT FOR SERVICE

ARTICLE 29 MODIFICATIONS OF THE AGREEMENT

ARTICLE 30 APPLICABLE LAW

ARTICLE 31 MISCELLANEOUS

ARTICLE 32 EFFECTIVE DATE OF AGREEMENT

ANNEXES

This Agreement is entered into in..... on the between:

(1) The Republic....., duly represented herein by....., hereinafter referred to as the "Lessor";

and

(2), incorporated under the laws of with registered numbers..... whose registered office is athereinafter referred to as the "Lessee".

4.1 Preamble

WHEREAS the discovery and production of Hydrocarbons is of importance to the economic development of and the Lessor desires that the requisite operations should be carried out in accordance with Law, titledas well as any other relevant legislation.

WHEREAS the interests of the..... economy and those of the Lessor require that the Petroleum/Natural Gas Operations should be carried out both with diligence and in accordance with Good Hydrocarbon Field Practices and the Lessee states that it possesses the technical, financial and administrative ability to successfully conduct with diligence the operations described in this Agreement, and that it desires to cooperate with the Lessor with a view to assisting it to promote the production of Hydrocarbons in, thereby contributing to the general economic development of the country.

NOW THEREFORE

In the light of the foregoing, the Parties mutually covenant and agree as follows:

4.2 Definitions

Unless the context otherwise requires, the following words and phrases have the meanings hereinafter assigned to them:

"Actual Expenditure" has the meaning assigned to it in Article 3.

"Affiliate Enterprise" means in relation to the Lessee, a company or other legal entity, or a natural person which is, directly or indirectly Controlled by the Lessee and any company or another legal entity or person which Controls or is Controlled, directly or indirectly, by a company or a legal entity or a natural person which Controls or is Controlled by the Lessee.

"Agreement" means this lease agreement including the Annexes.

"Annual Work Programme and Budget" has the meaning assigned to it in Article 5.1.

"Appraisal Programme" means a programme, following a Discovery of Hydrocarbons in the Contract Area, to delineate the Hydrocarbons Reservoir to which that Discovery relates in terms of thickness and lateral extent and to estimate the quantity of recoverable Hydrocarbons therein. Such a programme

may include a seismic survey or Appraisal Wells drilled to a depth sufficient to penetrate the Hydrocarbons Reservoir being appraised, or both.

"Appraisal Well" means a well drilled in the course of carrying out an Appraisal Programme.

"Associated Natural Gas" means Natural Gas which exists in a Hydrocarbons Reservoir in solution with Crude Oil, or as commonly known gas-cap gas which overlies or is in contact with Crude Oil.

"Bank Guarantee" means a payment guarantee by a first-class bank lawfully operating in the European Union/..... with a branch or established correspondent banking relationship with a first-class bank in, acceptable to the Lessor, substantially in the form set out in Annex F. The Bank Guarantee shall take effect on the Effective Date and should be delivered to the Lessor at the latest five (5) days before the date on which this Agreement is ratified by as the same will be notified in writing by the Minister at least days before the ratification date (if applicable).

"Business Day" means a day (other than a Saturday or Sunday) on which banks generally are open for business in[country]

"By-Products" has the meaning assigned to it in Law

"Calendar Quarter" means a period of three (3) consecutive Months commencing on any of 1 January, 1 April, 1 July and 1 October in any Calendar Year and includes the period from the Effective Date to the commencement of the next Calendar Quarter and "Quarterly" shall be construed accordingly.

"Calendar Year" means a period of twelve (12) Months beginning on the first (1st) day of January and ending on the thirty-first (31st) day of the following December.

"Consent" means all such licenses and permits required to be obtained from any Governmental Authority by the Lessee.

"Contract Area" means, on the Effective Date, the area described in Annex A and shown on the map in Annex B and, thereafter, that area as it may have been reduced from time to time by relinquishment or surrender in accordance with the terms and conditions of this Agreement.

"Control" means, a holding of:

- (a) at least thirty percent (30%) of the voting share capital of a company or enterprise; or
- (b) the right, according to specific provisions, to appoint the management of a company or enterprise.

For the purposes of Articles 20 of this Agreement and the LAW, "Control" is understood to mean a holding in excess of fifty percent (50%) of share capital and "Controlled" shall be construed accordingly.

"Crude Oil" means crude mineral oil, asphalt, ozocerite and all kinds of Hydrocarbons and bitumen in solid and liquid form, whether in their natural state or obtained from Natural Gas by condensation or extraction.

"Data" means all field data in relation to the Contract Area, including geological, geophysical, geochemical, petrophysical, drilling, engineering and production measurements and navigation tapes, magnetic tapes, cores, cuttings and well-logs in whatever form the same are produced and maintained by the Lessee during the Petroleum Operations.

"Development and Production Programme" means a programme prepared by the Lessee and submitted to the Lessor pursuant to Article 7.6 of this Agreement AND THE LAW.

"Discovery" means the first Hydrocarbons encountered by drilling a structure where the Hydrocarbons are recoverable at the surface in a flow measurable by generally accepted international petroleum industry testing methods.

"Dollars" and "\$" denote the lawful currency of the United States of America.

"EEA" means the European Economic Area created by the Agreement on the European Economic Area signed in Porto on 2 May 1992, as amended by the Protocol signed in Brussels on 17 March 1993.

"Effective Date" means the date set by Article 32.

"EIS" means the environmental impact study as provided for in the Environmental Laws.

"Elementary Block" shall have the meaning assigned to it under article.....of Law.....

"Environmental Laws" means the legislation applicable inregarding environmental matters.

"Euro", "EUR" and "€" means the lawful currency of the member states of the European Union that adopt the single currency.

"Exploitation Area" means an area constituting or forming part of the Contract Area delineated, following a commercially exploitable Discovery under the provisions of paragraph (a) of Article 7.6 of this Agreement.

"Exploitation Operations" means operations pursuant to a Development and Production Programme to develop a Discovery and to carry on Hydrocarbon Exploitation.

"Exploitation Stage" means the period described in Article 8.1 of this Agreement.

"Exploration Area" means the Contract Area held at any time by the Lessee during the Exploration Stage that does not include any part of the Contract Area which constitutes an Exploitation Area.

"Exploration Operations" means operations conducted for the purpose of Hydrocarbon Exploration and includes operations conducted for the purpose of carrying out an Appraisal Programme.

"Exploration Stage" means the period described in Article 2 of this Agreement.

"Exploration Well" means any well whose purpose at the commencement of drilling is to explore for an accumulation of Hydrocarbons whose existence at that time was unproven by drilling.

"First Phase" means the first phase of the Basic Exploration Stage described in Article 2.1(a) of this Agreement.

"Good Oilfield Practices" means all those things that are generally accepted in the international petroleum industry as good, safe, economical and efficient in exploring for and producing Hydrocarbons.

"Governmental Authority" means any authority exercising legislative, regulatory or administrative state functions on behalf of the State.

"Hydrocarbons" has the meaning assigned to it in Law.....

"Hydrocarbons Exploitation" has the meaning assigned to it in Law.....

"Hydrocarbons Exploration" has the meaning assigned to it in Law

"Hydrocarbons Reservoir" means a discrete accumulation of Hydrocarbons in the subsoil.

"Independent Third Party" has the meaning assigned to it in Law.....

"Law" means any law, rule, regulation, decree, statute, order, enactment, act or resolution of a Governmental Authority having effect within the State.

"Minimum Expenditure Obligation" means the amounts set out at the end of, respectively the First Phase, the Second Phase and the Third Phase in Article 3 (Lessee's Exploration Work Commitments).

"Minimum Work Programme" means the work to be performed in, respectively, the First Phase, the Second Phase and the Third Phase, pursuant to Article 3 (Lessee's Exploration Work Commitment).

"Minister" means the Minister of Environment and Energy of

"Month" means a calendar month.

"Natural Gas" means Hydrocarbons in gaseous form including, but not limited to, wet mineral gas, dry mineral gas, casing head gas and residue gas remaining after the extraction or separation of liquid and Hydrocarbons from wet gas and other valuable non-Hydrocarbon gas.

"Operator" means the entity and whereas applied the entity designated as the "Operator" and is responsible for the day-to-day operations.

"Party" means either the Lessor or the Lessee and "Parties" means the Lessor and the Lessee unless in either case this Agreement provides otherwise.

"Petroleum Operations" means Exploration Operations or Exploitation Operations.

"Phase" means any, or all, of the First Phase, the Second Phase or the Third Phase, as the context requires.

"Proceedings" means any suit, action or proceedings arising out of, or in connection with this Agreement;

"Produced and Saved" means produced in an Exploitation Area but does not include Hydrocarbons used in the course of production or lost, other than Hydrocarbons lost by reason of the negligence of the Lessee or the Lessee's failure to observe Good Oilfield Practices.

"Proper Application" has the meaning assigned to it in Article 27.6.

"Proprietary Data" means any interpretative and derivative data, meaning internal memoranda, reports, analyses, interpretations and evaluations prepared by the Lessee in respect of the Petroleum Operations.

"Response" means a written notification from a relevant Governmental Authority to the Lessee, that a Proper Application for a Consent is approved or rejected, with or without conditions.

"Second Phase" means the second phase of the Basic Exploration Stage described in Article 2.1(a) of this Agreement.

"Service Document" means a writ, application, claim, summons, petition, order, award, judgment or other document relating to any Proceedings.

"Sole Expert" means a member from: [the reference is indicative]

- (a) the Energy Institute of London;
- (b) the American Petroleum Institute; or
- (c) ,

provided that if there is a conflict of interests with all of the aforementioned institutes, the Lessor shall be entitled to appoint an independent, reputable petroleum institute of another state which Hydrocarbons are produced.

"State" or "....." means the Republic.....

"State Data" means any and all geological, geophysical, drilling, well production data, well location maps and other information held or developed by the Lessor in any form in relation to the Contract Area as well as any data acquired and/or produced under the non-exclusive marine seismic data acquisition and services commenced on in any form in connection to the Contract Area.

"Third Phase" means the third phase of the Basic Exploration Stage described in Article 2.1(a) of this Agreement.

4.3 Interpretation

In this Agreement, subject to any express contrary indication:

- (a) any reference to an Article shall be construed as a reference to an article of this Agreement and any reference to an Annex shall be to an annexure to this Agreement;
- (b) any reference to a person shall be construed as including:
 - (i) any person, firm, company, Governmental Authority, corporation, society, trust, foundation, government, state or agency of a state or any association or partnership (in each case whether or not having separate legal personality) of two or more of these;
 - (ii) a reference to the successors, permitted transferees and permitted assignees of any of the persons referred to in sub-paragraph (i) above;
- (c) any reference to this Agreement or any other agreement or document shall be construed as a reference to that agreement or document as it may have been, or may from time to time be, amended, varied, novated, replaced or supplemented;
- (d) any reference to a Law shall be construed as a reference to it as it may have been or may from time to time be (with or without modification) amended or re-enacted and any subordinate legislation made, or thing done, or may from time to time be done.
- (e) capitalised terms used in this Agreement shall have the meaning ascribed to them in the Definitions section or elsewhere in the Agreement.

4.4 ARTICLE 1. Scope of the Agreement

1.1 This Agreement is a lease agreement pursuant to which, in accordance with Law....., the State as the Lessor grants to the Lessee in accordance with the terms and conditions hereof, exclusive rights to carry on Hydrocarbon Operations in the Contract Area.

1.2 The Lessee undertakes in accordance with the terms and conditions set out herein to at all times conduct Hydrocarbon Operations in the Contract Area in accordance with the Law.

1.3 The cost and risk of carrying on Hydrocarbon Operations shall be borne exclusively by the Lessee and the Lessee will have no right to recover such costs, or any part thereof, from the Lessor except as hereinafter provided in this Agreement.

4.5 ARTICLE 2 Duration of the Exploration Stage

The Exploration Stage shall commence on the Effective Date and, unless this Agreement is terminated earlier in accordance with its terms, shall subsist for the periods described in this Article 2.

2.1 For a Basic Exploration Stage

(a) Subject as hereinafter provided, the basic exploration stage (the "Basic Exploration Stage") shall subsist for years. For the purposes of this Article and Article 3, the Exploration Stage is divided into consecutive exploration Phases defined for the Contract Area as follows:

First Phase: ... years

Second Phase:years

Third Phase: years

(b) Where the Lessee has, during the First Phase, fulfilled its Minimum Work Programme and Minimum Expenditure Obligation relating to that Phase in accordance with Article 3 it may, by giving notice to the Lessor, continue its Exploration Operations during the Second Phase and shall thereupon assume and during the Second Phase discharge its Minimum Work Programme and Minimum Expenditure Obligation relating to that phase set out in Article 3;

(c) Where the Lessee has, during the Second Phase, fulfilled its Minimum Work Programme and Minimum Expenditure Obligation relating to that Phase in accordance with Article 3 it may, by giving notice to the Lessor, continue its Exploration Operations during the Third Phase and shall thereupon assume and during the Third Phase discharge its Minimum Work Programme and Minimum Expenditure Obligation relating to that phase set out in Article 3;

(d) In the event that before the end of the First Phase or, as the case may be before the end of the Second Phase the Lessee has not given to the Lessor notice pursuant to Article 2.1(b) or, as the case may be, Article 2.1(c), the rights and obligations of the Lessee in respect of the Contract Area shall cease and, subject always to the obligations of the Lessee in respect of liabilities which have accrued under this Agreement, shall be deemed to have been terminated.

(e) Upon the Lessee's duly justified and reasonable request, in order to provide the Lessee with sufficient time to drill and/or test a well and to enable the Lessee to make a decision whether to commit to the next Phase (other than a Third Phase) in accordance with Article 2.1(b) and (c) above, a current Phase may be extended by a period up to..... Months, provided that the well is the subject of the Minimum Work Obligation and has been spudded prior to the end of the said Phase. If required, and upon the Lessee's duly justified and reasonable request, the Phase may be further extended for a reasonable time period.

(f) In the event that a current Phase (other than a Third Phase) is extended pursuant to Article 2.1(e) the amount of time by which the current Phase is extended shall be deducted from the period of time defined for the subsequent Phase.

2.2 For an Exploration Stage Extension

(a) The Lessee may, in accordance with the provisions ofLaw apply for an exploration stage extension (an "Exploration Stage Extension").

(b) It is understood and agreed between the Parties that a requirement for additional time to complete an Appraisal Programme, or where additional reserves must be located before a commercial deposit can be established, to undertake further exploration drilling, or to establish a market for Natural Gas, is a requirement falling within the scope of Law.

(c) If an Exploration Stage Extension is granted pursuant toLaw, the Lessee shall provide to the Lessor a Bank Guarantee on the first day of the Exploration Stage Extension for the full amount, if any, of the shortfall being the difference between the Minimum Expenditure Obligation at the end of the Basic Exploration Stage and the Lessee's Actual Expenditure during that stage, as defined in Article 3. Such Bank Guarantee will replace any existing current Bank Guarantee already provided under this Agreement. In the event that there is no such shortfall, the Lessor shall return any Bank Guarantee provided pursuant to the above promptly upon the commencement of the Exploration Stage Extension.

2.3 For a Special Exploration Stage Extension

(a) A Special Exploration Stage Extension not exceedingyears for onshore, may be granted to the Lessee following its submission of a relevant application by resolution of theAdditional terms and conditions may be imposed in the resolution of the notwithstanding the provisions of this Agreement, and this Agreement shall be amended accordingly.

(b) In a case where the Lessee has made a Discovery in the Contract Area of non-associated gas or a Discovery of a Hydrocarbons Reservoir which cannot be exploited commercially without the exploitation of Associated Natural Gas, the Lessor will support an application by the Lessee underLaw for a Special Exploration Stage Extension sufficient to enable the Lessee, before making a declaration of commerciality, to consider the construction and financing of the necessary infrastructure for the disposal of Natural Gas.

4.6 ARTICLE 3 Lessee's Exploration Work Commitments

3.1 In discharge of its obligation to carry out Hydrocarbon Operations in the Contract Area, the Lessee shall commence Exploration Operations withinMonths of the Effective Date and shall carry out the work and spend not less than the sums specified in Article 3.2.

3.2 For the purpose of this Article, the Minimum Work Programme to be performed, and the Minimum Expenditure Obligations of the Lessee for each Phase of the Basic Exploration Stage, as described in Article 2, shall be as follows:

3.3 Subject to Article 3.4, the Minimum Expenditure Obligations set forth in Article 3.2 shall not, in respect of any Phase, be satisfied unless during that Phase the total Actual Expenditure attributable to the work for that Phase equals or exceeds the amount of the Minimum Expenditure Obligation for that Phase provided, however, that if, in any Phase, the Lessee has to the reasonable satisfaction of the

Lessor carried out the Minimum Work Programme for that Phase the Minimum Expenditure Obligation, notwithstanding any shortfall, shall be deemed for that Phase to have been satisfied.

3.4 Where the Actual Expenditure incurred by the Lessee during a Phase exceeds the Minimum Expenditure Obligation for that Phase, the amount of such excess shall be carried forward and credited against the Minimum Expenditure Obligation in the next succeeding Phase; provided, however that nothing in this provision shall be construed as extinguishing, postponing or modifying any obligation of the Lessee to drill an Exploration Well pursuant to this Article.

3.5 An Exploration Well drilled by the Lessee in accordance with Good Oilfield Practices shall be treated as discharging the obligation of the Lessee to drill an Exploration Well under this Article if:

.....

3.6 No Appraisal Well, no seismic survey carried out pursuant to an Appraisal Programme, and no expenditure incurred in carrying out such Appraisal Programme shall be treated as discharging or contributing to the discharge of the Minimum Work Programme or Minimum Expenditure Obligations.

3.7 The Lessee shall five (5) days before the date on which this Agreement is ratified and, if the Lessee has given notices to the Lessor under Article 2.1(b) or Article 2.1(c), on the first day of the Second Phase or the first day of the Third Phase, respectively, provide, a Bank Guarantee in respect of the Minimum Expenditure Obligation (less any amount credited in accordance with Article 3.4) for the relevant Phase.

3.8 Subject to Article 3.3, if, at the end of any Phase, the Actual Expenditure incurred by the Lessee during that Phase (taking account of any amount carried forward pursuant to Article 3.4) does not equal or exceed the Minimum Expenditure Obligation for that Phase, the Bank Guarantee shall provide for the payment thereunder to the Lessor of the full amount of the shortfall.

3.9 For the purpose of this Agreement: "Actual Expenditure" means expenditure incurred by the Lessee during a particular Phase of the Basic Exploration Stage, being:

(a) expenditure solely and directly attributable to the activities of the Minimum Work Programme for that particular Phase, as described in Article 3.2 and General and Administrative Costs as defined in Annex C allocated to such activities; and

(b) under the condition that the Minimum Work Programme of that Phase has been performed, all expenditure incurred (either before or after such performance) for Exploration Operations in the approved Annual Work Programmes and Budgets for that Phase and the General and Administrative Costs as defined in Annex C allocated to such Exploration Operations.

3.10 The Lessee shall maintain accurate records and accounts of all Actual Expenditure and, with regard to the General and Administrative Costs (as defined in Annex C) shall maintain all documents, including invoices, records and time sheets. In order to verify that Actual Expenditure is comprised only of amounts that are required to perform the respective Exploration Operations of a particular Phase, the Lessor shall be entitled, subject to Article 19.11(a), to conduct an audit in accordance with Annex C.

3.11 In respect of that area relinquished or surrendered under Article 6, the Lessee shall, in accordance with practices customary in the international petroleum industry, within Months from the date of termination of any Phase of the Exploration Stage, remove the installations used, plug and abandon all wells and restore the environment to its original condition.

4.7 ARTICLE 4 Technical Advisory Committee

4.1 The Lessor and the Lessee shall within five (5) calendar days of the Effective Date establish a committee to be known as the Technical Advisory Committee which shall consist of:

- (a) a chairperson and two other persons appointed by the Lessor; and
- (b) three other persons appointed by the Lessee.

4.2 Either the Lessor or the Lessee may appoint by notice in writing any person respectively appointed by them to act in the place of any member of the Technical Advisory Committee during his absence or incapacity to act as a member of the Technical Advisory Committee.

4.3 When such alternate member acts in the place of any member, he shall have the powers and perform the duties of such member.

4.4 Without prejudice to the rights and obligations of the Lessee in relation to the management of its operation, the functions of the Technical Advisory Committee shall be:

- (a) save where a proposed Annual Work Programme and Budget is deemed to have been approved by the Lessor pursuant to the Presidential Decree and Article 5 of this Agreement, to review the Annual Work Programme and Budget submitted by the Lessee and consider proposals for the revision of specific features thereof submitted by the Lessor;
- (b) to review any Appraisal Programme submitted by the Lessee to the Lessor and to monitor the implementation of the work conducted thereunder;
- (c) to review any Development and Production Programme submitted by the Lessee to the Lessor in connection with a Discovery of commercially exploitable Hydrocarbons;

4.5 All meetings of the Technical Advisory Committee shall be held at such places, whether within or, with the prior approval in writing of the Lessor, outside, and at such times, but not less than one meeting during each four-month period of a Calendar Year, as may be determined unanimously by its members.

4.6 In addition to the scheduled meetings of the Technical Advisory Committee, either the Lessor or the Lessee shall have the right to convene a meeting of the Technical Advisory Committee within in the event of an emergency or extraordinary situation by giving not less than calendar days written notice to each of the members of the Technical Advisory Committee.

4.7 Five members of the Technical Advisory Committee shall form a quorum for a meeting of the committee.

4.8 The Lessor and the Lessee shall each have the right to call any expert to any meeting of the Technical Advisory Committee to advise the committee on any matter of a technical nature requiring expert advice.

4.9 All decisions of the Technical Advisory Committee shall be by unanimous vote of the members present at a meeting thereof and together forming a quorum.

4.10 If the Technical Advisory Committee is unable to reach unanimity on any matter being considered by the committee under this Article 4, the matter shall be referred to the Lessee and the Lessor within fifteen (15) calendar days from the date of the meeting where the matter was considered. If the Parties fail to reach unanimity within thirty (30) calendar days of such referral, the matter shall be referred to a Sole Expert for final determination in accordance with Article 23. Provided however that in

the case of an Annual Work Programme and Budget submitted by the Lessee prior to a Discovery by the Lessee, the proposals of the Lessee, set out in the Annual Work Programme and Budget, shall be deemed to have been accepted by the Technical Advisory Committee so long as those proposals have been devised in conformity with Article 5 and are consistent with and are intended to enable the Lessee to perform its work and expenditure obligations under Article 3.

4.8 ARTICLE 5 Annual Work Programme and Budget

5.1(.) Months before the end of each Calendar Year, or at such time as may be mutually agreed with the Lessor, the Lessee shall prepare and submit to the Lessor for approval a programme setting forth all works and operations, provided for under the Agreement (studies, exploration, procurement, equipment, installations, etc) with the budgeted cost for each item (the "Annual Work Programme and Budget") which it proposes to carry out during the following twelve (12) Month period (provided that if the Effective Date is different to the date of commencement of a Calendar Year, withinBusiness Days of the Effective Date the Lessee shall submit a programme for the remainder of the current Calendar Year).

5.2 WithinMonth(s) of its submission, the Lessor may ask for clarifications in relation to the Annual Work Programme and Budget and put forward proposals for consideration by the Technical Advisory Committee for the revision of specific features thereof relating to the nature and cost of the works and operations. If the Lessor does not put forward any such proposals within the prescribed time period, the Annual Work Programme and Budget shall be deemed to have been approved by the Lessor.

5.3 Each Annual Work Programme and Budget and any revision or amendment thereof shall be consistent with the requirements of the Minimum Work Programme and Minimum Expenditure Obligation for the relevant Phase.

5.4 If the Lessee and Lessor fail to reach agreement on proposed revisions to the Annual Work Programme and Budget within Business Days of the meeting scheduled to consider the matter(s) in issue, then such matter(s) shall be referred to a Sole Expert for determination.

5.5 The Lessor shall have the right to monitor the performance of the Annual Work Programme and Budget.

5.6 In the event that extraordinary circumstances arise that are not provided for in the Annual Work Programme and require immediate action, the Lessee may take all proper steps for the achievement of the objectives of the Agreement. Any resulting costs shall be included in the expenses referred to in section 3 of Annex C. The Lessor shall be forthwith notified of all modifications referred to above.

4.9 ARTICLE 6 Surrender During the Exploration Period - Relinquishment

6.1 Surrender

(a) Subject to the provisions of this Article, prior to the end of the Exploration Stage, the Lessee may, by written notice which becomes effective thirty (30) Business Days after it has been served on the Lessor, surrender its exploration rights over the entire Contract Area or a part thereof consisting of one or more contiguous Elementary Blocks.

(b) In the event that the Lessee desires to surrender its rights to conduct Petroleum Operations in the entire Contract Area without having fulfilled all of its Minimum Work Programme and Minimum Expenditure Obligations under Article 3.2 (or such work and expenditure obligations as may be agreed between the Lessee and the Lessor for any Exploration Stage Extension or Special Exploration Stage Extension) ("Additional Expenditure Obligations"), the Lessee shall pay to the Lessor, prior to or on the effective date of any surrender, a sum equal to the amount to be the difference of..... The Lessor shall, in procuring satisfaction of such payment, be entitled to invoke any amount outstanding under the relevant Bank Guarantee.

(c) The Lessee may surrender its rights, free of all obligations, at the end of any Phase if it has fulfilled all of its contractual obligations under this Agreement (including its Minimum Work Programme and Minimum Expenditure Obligations) up to the end of that Phase.

(d) Without prejudice to its other liabilities and obligations under this Agreement, the Lessee's surrender shall not give rise to any claim by it against the Lessor in costs or damages.

6.2 Relinquishment

(a) Where the Lessee has, prior to the end of the First Phase, given to the Lessor notice under Article 2.1(b) the Lessee, shall before the commencement of the Second Phase relinquish a portion or portions of the Contract Area (providing they comprise a number of contiguous Elementary Blocks) so that the Contract Area retained is not more than per cent (.... %) of the Contract Area on the Effective Date.

(b) Where the Lessee has prior to the end of the Second Phase of the Basic Exploration Stage, given to the Lessor notice under Article 2.1(c) the Lessee shall before commencement of the Third Phase relinquish a portion or portions of the Contract Area (providing they comprise a number of contiguous Elementary Blocks) so that the Contract Area retained is not more than per cent %) of the Contract Area on the Effective Date.

(c) When the Exploration Stage comes to an end in accordance with Article 2, the Lessee shall relinquish the entire Contract Area held by him save for any area which pursuant to Article 7 has become an Exploitation Area.

6.3 Clean-up

Prior to surrender or relinquishment of the Contract Area or any part of it, the Lessee shall:

(a) in accordance with practices customary in the international petroleum industry, perform any necessary clean-up activities including removal of any facilities and equipment installed by the Lessee, in order to restore such area as nearly as possible to the original condition that existed on the Effective Date;

(b) fulfil its obligations under Articles 9.1 and 9.2; and

(c) take action necessary to prevent hazards to environment, human life or property.

4.10 ARTICLE 7 Discovery Exploitation Stage

7.1 Where the Lessee makes a Discovery of Hydrocarbons in the Contract Area it shall inform the Lessor promptly by notice in writing and forthwith cause tests to be made in connection with the

Discovery in order to determine the extent to which the Discovery is potentially of commercial interest. The results from those tests together with a technical evaluation thereof shall be submitted to the Lessor as soon as the tests and technical evaluation have been completed.

7.2 Where the Lessee makes a discovery of any mineral in the Contract Area which is not a Hydrocarbon, it shall inform the Lessor promptly by notice in writing.

7.3 Save in the event that the Lessee informs the Lessor when test results are submitted that the Discovery does not merit appraisal or does not merit appraisal until further exploration drilling has taken place in the Contract Area, the Lessee shall, when the tests referred to in Article 7.1 are completed, prepare and submit to the Lessor for approval an Appraisal Programme relating to the Discovery. Within two (2) Months from the date on which the Appraisal Programme is submitted to the Lessor, the Lessor will approve the Appraisal Programme unless, after its review by the Technical Advisory Committee, the Lessor determines that the Appraisal Programme is unlikely to satisfy the requirements of Article 7.5 (a) to (e). In that event, if the Lessor and the Lessee are unable to agree appropriate changes to the Appraisal Programme, the matter or matters in dispute will be referred to a Sole Expert for determination in accordance with Article 23.

7.4 When an Appraisal Programme has been completed, the Lessee will inform the Lessor by a notice in writing whether the Discovery is commercially exploitable, and the determination of the Lessee in that regard shall be conclusive.

7.5 A notice in writing under Article 7.4 shall be accompanied by a report on the Discovery containing particulars of: -

[.....]

7.6 Where the Lessee by notice in writing under Article 7.4, has informed the Lessor that the Discovery is commercially exploitable:

(a)

(b) Without prejudice to the provisions of Article 2.3(b), the Lessee will prepare and submit to the Lessor, not later than.... Months from the date of the notice given under Article 7.4, a Development and Production Programme in respect of the Discovery. The Development and Production Programme shall be consistent with the requirements of be prepared on sound engineering and economic principles in accordance with Good Oilfield Practices and be designed to ensure: -

(i) the optimum economic recovery of Hydrocarbons by the efficient, beneficial and timely use of the hydrocarbon resources of the Exploitation Area; and

(ii) adequate measures for the protection of the environment in conformity with accepted standards prevailing in the international petroleum industry and taking account of the particular characteristics of the Contract Area.

(c) Without prejudice to the generality of the requirements set out in Article 7.6(b), the Development and Production Programme will contain the following particulars: -

[.....]

7.7 At or before the time the Development and Production Programme is submitted to the Lessor, the Lessee, if so requested by the Lessor and in addition to the EIS prepared in accordance with Article 12, make available to the Lessor an environmental impact study prepared by a third party (approved by the Lessor) with expertise in the field of international environmental studies, for the purpose of

assessing the effects of the proposed development on the environment, including its effect on human beings, wild life and aquatic life in and around the Exploitation Area. This environmental impact study shall, as a minimum, address the matters referred to in Article 12.6.

7.8 Within two (2) Months from the date on which the Development and Production Programme was submitted to the Lessor, the Lessor will approve the Programme unless the Lessor, after review of the Programme by the Technical Advisory Committee, determines that the Programme does not satisfy the requirements of Article 7.6(b). In that event, if the Lessor and the Lessee are unable to agree appropriate changes to the Development and Production Programme, the matter or matters in dispute will be referred to a Sole Expert in accordance with Article 23.

7.9 The opinion of the Sole Expert shall be binding on the parties with the effect that: -

(a) if the Sole Expert is of the opinion that the Development and Production Programme as submitted by the Lessee meets the requirement of Article 7.6 (b), the Development and Production Programme shall be deemed to have been approved by the Lessor;

(b) if the Sole Expert is of the opinion that the Development and Production Programme does not meet the requirements of Article 7.6(b), the Lessee shall, not later thancalendar days from the date on which the expert has given his opinion, either re-submit the Development and Production Programme amended to take account of the opinion of the Sole Expert or surrender the Exploitation Area; and

(c) where the Lessee has re-submitted the Development and Production Programme, amended as aforesaid, the Development and Production Programme, as so amended, shall be deemed to have been approved by the Lessor within one week after receipt by the Lessor.

4.11 ARTICLE 8 Duration and Expiration of the Exploitation Period

8.1 Subject to the possibility of an extension pursuant toLaw, the duration of the Exploitation Stage for each Exploitation Area shall be years from the date on which a notice was given by the Lessee to the Lessor under Article 7.4 of this Agreement (...) years plus two (2) extensions of years each).

8.2 The Lessee may at any time unconditionally surrender 100% of its exploitation rights over any one (1) or more or over all of the Exploitation Areas created under the terms of Article 7.6, by serving notice to the Lessor calendar days in advance. Such surrender shall give the Lessee no claim whatsoever against the Lessor in respect of costs or damages. Surrender by the Lessee of less than 100% of its exploitation rights in any Exploration Area or surrender with conditions shall not be permitted.

8.3 Upon the expiration of the Exploitation Stage in any Exploitation Area the same shall revert, free and clear, to the State.

(a) The use of real property, which has been acquired pursuant to the provision of Law....., and the ownership of moveable property, the value of which has been fully depreciated, shall be turned over to the Lessor ipso jure without the payment of any consideration.

(b) Real property which has not been acquired pursuant to the provision of Law and movable property, the value of which has not been fully depreciated shall be transferred to the Lessor at a fair market value taking due account of the condition of each asset and making allowance for

depreciation already recovered hereunder. In the event that an agreement cannot be reached on a fair market value for any asset, the matter shall be referred for determination to a Sole Expert under Article 23.

(c) In respect of the assets acquired by the Lessor under this Article, the Lessor shall bear no responsibility whatsoever to the lenders of the Lessee for any of the Lessee's debts and the Lessee hereby indemnifies and holds harmless the Lessor against any claims by its lenders. In the event that security has been granted in favour of any such lender the Lessee is obliged to release the security before the property reverts to the State.

(d) In respect of (a) and (b) above if, upon expiration of the Exploitation Stage of any Exploitation Area, any such real property and/or assets are still required by the Lessee for its Petroleum Operations in other Exploitation Area(s) in the Contract Area, the Parties shall meet to agree if, to what extent and under what conditions such transfer to the State shall occur so as to allow the Lessee to conduct its Petroleum Operations in the remaining Exploitation Area(s).

8.4 Unless the Lessor states otherwise not later thanMonths prior to the expiration of the Exploitation Stage the Lessee shall be obliged to:

- (a) plug all producing wells
- (b) remove all installations; and
- (c) restore the environment in accordance with the proposals set out in the Development and Production Programme, the EIS and any further environmental impact study prepared pursuant to Article 12.

8.5 A committee shall be formed for the monitoring and coordination of work to ensure the fulfilment of the Lessee's obligations under Article 8.4 ("The Committee for the Removal and Disposal of the Installations"). This Committee shall comprise three (3) members. One member shall be appointed by the Lessor, one by the Lessee and the third member, who shall be the chairman of the Committee, shall be appointed by the two already appointed members, jointly. This third member shall be selected from persons who are independent of the Lessor and the Lessee and have experience on matters of Good Oilfield Practices in the international petroleum industry. If the two members fail to appoint the third member of such Committee within calendar days of their appointment, the Lessor or the Lessee shall be entitled to request the selection and the appointment of the third member by the Sole Expert.

(a) The Committee shall examine all technical, legal, environmental and fiscal matters related to the removal of the installations and may, at its discretion, request the assistance of specialists on such subjects.

(b) The Committee shall decide in accordance with the opinion of the majority of its members and its decisions shall be binding upon the Lessor and the Lessee. The Committee's decision is subject to the approval of the Minister.

(c) The Committee's expenses shall be paid by the.....

8.6 The obligations to remove installations may be suspended following the consent of the Minister for whatever period of time the existence of such installations is considered necessary for the performance of the Lessee's operations in the Contract Area or in another contract area, in accordance with the provisions and the procedure laid down in Law.....

8.7 The provisions of Article 8.4 shall apply mutatis mutandis where the Lessee surrenders its exploitation rights pursuant to Article 8.2. The provisions of Article 8.6 shall also apply, mutatis mutandis, if the Committee for the Removal and Disposition of Installations has been established, where such forfeiture or surrender has taken place.

4.12 ARTICLE 9 Conduct of Petroleum Operations in the Contract Area – Obligations of the Lessee

9.1 The Lessee will carry out Petroleum Operations in the Contract Area:

- (a) in accordance with theLaw and other applicable provisions,.....;
- (b) diligently, in accordance with Good Oilfield Practices, and in a safe workmanlike manner and, in respect of Petroleum Operations in any Exploitation Area, in compliance with the Development and Production Programme for that area.

9.2 Without prejudice to the generality of the foregoing, the Lessee, in accordance with such laws as may be prescribed from time to time, will:

- (a) take all measures to control the flow and to prevent loss in any form or waste of Hydrocarbons above or under the ground during drilling, producing, gathering, distributing or storage operations;
- (b) take whatever practical measures are necessary to prevent any injurious ingress of water or damage of any kind to any Hydrocarbon-bearing formation which may be encountered while drilling operations are in progress, or upon abandonment of any well and shall carefully locate and preserve any fresh water sources discovered in the course of such operations;
- (c) take all precautions against fire and any unwarranted wasting of Hydrocarbons or water;
- (d) upon completion of the drilling of a well, inform the Lessor when the well will be tested, and the production rate ascertained;
- (e) if the Lessor, acting reasonably, has determined that works or installations erected by the Lessee may endanger the physical safety of third parties or their property or cause pollution or other environmental damage harmful to people, animals, aquatic life or vegetation, take, as may be required by the Lessor, remedial measures and repair damage to the environment;
- (f) effect and maintain for Petroleum Operations insurance coverage of the type, and in such amount, as is customary in the international petroleum industry in accordance with Good Oilfield Practices, and, on request, furnish to the Lessor certificates evidencing that such coverage is in effect when any surrender takes place. The said insurance shall, without prejudice to the generality of the foregoing cover those matters described in Annex E;
- (g) require its contractors and sub-contractors to carry insurance of the type and in such amount as is customary in the international Petroleum industry in accordance with Good Oilfield Practices; and
- (h) indemnify, defend and hold the Lessor harmless against claims, losses and damages of any nature whatsoever, including, without limitation, claims for loss or damage to property, injury or death to persons or damage to the environment caused by or resulting from Petroleum Operations conducted by or on behalf of the Lessee, provided that the Lessee shall not be held responsible to the Lessor under this provision for any loss, claim, damage or injury caused by or resulting from any negligent

action or wilful misconduct of personnel employed by the Lessor or from action done at the direction of the Lessor.

9.3 The Lessee shall promptly notify the Lessor of any serious events within the Contract, Area or of any serious damage to the installations capable of impeding the performance of the Annual Work Programme and Budget. If acts or omissions on the part of the Lessee its agents or servants, involve liability of the Lessor towards third parties, it shall indemnify and hold harmless the Lessor in respect of all such liability.

9.4 The Lessee shall, before drilling any Exploration or Appraisal Well:

(a) notify the Minister:

[.....]

(b) submit to the Lessor an application for consent to drill as set forth in Annex D:

[.....]

9.5 Where the Lessee has, for the purpose of implementing a Development and Production Programme relating to one or more Exploitation Areas, constructed one or more pipeline(s), the Lessee shall on the application of the Lessor and subject to available capacity, in respect of which the Lessee shall have priority, make its pipeline available to transport the Hydrocarbons of the Lessor or of Independent Third Parties. The Hydrocarbons aforesaid shall be transported by the Lessee on reasonable terms and conditions and where agreement on such terms cannot be reached by the Lessee and the Lessor, or as the case may be, the Lessee and an Independent Third Party withincalendar days of the commencement of discussions, the issue or issues in dispute shall be referred to a Sole Expert for determination under Article 23.

9.6Months before the beginning of each Calendar Year, the Lessee shall submit to the Lessor a statement showing the anticipated production of Hydrocarbons and By-Product(s) for the following Calendar Year and their expected values. Three (3) Months prior to the anticipated commencement of first regular production of the Hydrocarbons and By-Products, the Lessee shall submit a similar statement covering the period to the end of the then current Calendar Year.

4.13 ARTICLE 10 Conduct of Petroleum Operations in the Contract Area – Rights of the Lessee

10.1 The Lessee shall have the exclusive right to carry out Exploration and Exploitation Operations in the Contract Area and, to manage such operations.

10.2 Subject to the provisions relating to the safety of installations, representatives of the Lessee, its personnel, and the personnel of its contractors and of their sub-contractors may enter the Contract Area and have free access to all installations of the Lessee.

10.3 The Lessee, its contractors and their sub-contractors shall be entitled to freely re-export any items they import into the country.

10.4 The Lessee shall be entitled to sell, within or outside the country, equipment, as well as materials resulting from the dismantling of installations no longer in use by notifying the Lessor withinMonths of the objects to be sold and the asking prices thereof.

10.5 No Governmental Authority shall grant to any third party any Hydrocarbons prospecting license in the Contract Area (or any part of it) to collect seismic and other data with the view to assessing its oil and gas potential without the prior written consent of the Lessee.

4.14 ARTICLE 11 Unitisation

This article will be dependent on the legislation in the adjoining nation. And if there are practices of unitisation in other licenses and/or cooperation agreement with the neighbour nation.

4.15 ARTICLE 12 Environmental Protection

12.1 All terms in Article 12 will be considered according to the legislation in force. And the actual legislation shall be mentioned with title and date.

12.2 The Lessee shall:

- (a) conduct all Petroleum Operations in a manner which will assure the protection of environment in accordance with Good Oilfield Practices;
- (b) carry out all Petroleum Operations in full compliance with:
 - (i) the Environmental Laws;
 - (ii) the approved Strategic Environmental Assessment (SEA);
 - (iii) the Terms of Environment (ToE) resulting from the relevant Environmental Impact Assessment (EIA) procedure; and
 - (iv) any additional Environmental Action Plan (EAP),pursuant to this Article and Good Oilfield Practices, while ensuring that such operations are properly monitored;
- (c) employ modern and appropriate techniques in accordance with Good Oilfield Practices, for preventing any environmental damage that might be caused by the Petroleum Operations, and for minimizing the environmental impacts of the Petroleum Operations and works within the Contract Area and in adjoining or neighbouring or more distant areas;
- (d) properly and timely implement any Laws in force regarding the safety of Hydrocarbons exploration and production activities during the period of Petroleum Operations;
- (e) procure that the documentation on environmental compliance in conducting Petroleum Operations, such as SEA, ToE or EAPs and associated documents are made available to its employees and to its contractors and their subcontractors to develop adequate and proper awareness of the measures and methods of environmental protection to be used in conducting Petroleum Operations; and
- (f) ensure that any agreement between the Lessee and its contractors and their sub-contractors relating to the Petroleum Operations shall include the terms as set out in this Article 12 and any established measures and methods for the implementation of the Lessee's obligations in relation to the environment under this Agreement.

12.3 The Lessee undertakes for the purposes of this Agreement to take all necessary and adequate steps:

- (a) to fully and timely fulfil all requirements of applicable Environmental Laws; and
- (b) to prevent environmental damage to the Contract Area and neighbouring or more distant areas being caused by Petroleum Operations.

12.4 If the Lessor has on reasonable grounds reason to believe that any works or installations erected by the Lessee or any operations carried out by the Lessee are endangering or may endanger persons or any property of any other person or are causing pollution or are harming wildlife, aquatic life or the environment to a degree which the Lessor deems unacceptable, the Lessee should take remedial measures within such period as may be determined by the Lessor and repair any damage to the environment, the costs of such remedial action to be borne by the Lessee. If the Lessor deems it necessary, it may require the Lessee to discontinue Petroleum Operations in whole or in part until the Lessee has taken such remedial measures or has repaired any damage attributable to it.

12.5 The measures and methods to be applied by the Lessee for the purposes of complying with the terms of this Article 12 shall be determined in timely consultation and agreed with the Lessor prior to the commencement of the relevant Petroleum Operations and/or associated works and whenever there is a significant change in the scope or method of carrying out Petroleum Operations, and the Lessee shall take into account Good Oilfield Practices, as well as the relevant requirements of the ToE.

12.6 Pursuant to Article 12.2(a), the Lessee shall prepare and submit to the competent governmental authority, an Environmental Impact Study (EIS) for the relevant Petroleum Operations in respect of which an EIA procedure is required. The EIS shall, as a minimum:

- (a) fully comply with the requirements of the EIA legislation in force;
- (b) meet the requirements and guidelines set out by SEA; and
- (c) be prepared by a third party with adequate expertise in the field of environmental studies, which will be appointed by the Lessee to work on its behalf.

12.7 Each project, work, activity or any other part of the Petroleum Operations that is subject to an EIA, shall commence only after the ToE have been approved.

12.8 Any modification, expansion, improvement or modernisation of a project, work, activity or any other part of the Petroleum Operations with approved ToE, requires compliance with the relevant provisions of EIA legislations. The same applies for the renewal (time extension) of the ToE decision.

12.9 In case of activities for which an EIA is not mandatory, but nevertheless it is reasonably expected that some minor environmental impacts may occur, as in particular for the case of seismic surveys, the Lessee shall prepare an EAP, to determine, assess and mitigate these impacts, focusing on prevention and minimisation thereof in accordance with Good Oilfield Practices.

12.10 The EAP shall be submitted to the Lessor for review and must be complied with by the Lessee.

12.11 The Lessee shall include in each Annual Work Programme and Budget to be submitted to the Lessor, an environmental report on the work to be undertaken as provided in that document, as well as on the work undertaken in accordance with the preceding Annual Work Programme and Budget.

12.12 Before carrying out any drilling activities, the Lessee shall fully meet the requirements of the applicable legislation for safety, contingency (i.e. oil spill, fire, accident, emissions etc.) and major hazard management plans.

12.13 In the event of any emergency or accident arising from Petroleum Operations affecting the environment, the Lessee shall immediately notify the Lessor, giving details of the incident and immediately implement the relevant contingency plan. In dealing with any emergency or accident affecting the environment, the Lessee shall at all times take such action as is prudent and necessary in accordance with the Environmental Laws and Good Oilfield Practices in the circumstances.

12.14 The Lessee shall not be liable for any environmental condition or damage existing in the Contract Area prior to the commencement of the Lessee's operations therein. For this purpose, a baseline report shall be prepared by the Lessee, to detail the condition of the environmental parameters and resources at the time prior to operation commencement. The baseline report shall be submitted for review to the Lessor. If no objections will rise by the latter withinBusiness Days, the report is deemed accepted.

4.16 ARTICLE 13 Royalties

13.1 The Lessee shall pay to the Lessor

..... (precise description of the royalty legislation or reference to law.....

In case of a production sharing agreement the terms shall be precisely described.

4.17 ARTICLE 14 Taxation

The tax regime of this Agreement is exclusively governed by the provisions of the present Article, and,

4.18 ARTICLE 15 Fees and Bonuses

FEES AND BONUSES

15.1 The Lessee shall pay the following surface fees:

[.....]

15.2 The Lessee shall pay the following amounts as bonus:

[.....]

4.19 ARTICLE 16 Valuation of Hydrocarbons

Taking into account the provisions of the, the value of any Hydrocarbons Produced and Saved shall be determined as follows:

16.1 For Crude Oil

[.....]

16.2 For Natural Gas Condensate and other Hydrocarbons and By-Products

[.....]

16.3 Final Determination

In the event of any difference, dispute or failure to agree between the Lessor and the Lessee about the value or price of any Hydrocarbons or the manner in which such value or price is to be determined, in accordance with the provisions of this Article, the matter or matters at issue shall be subject to final determination by the Sole Expert in accordance with Article 23.

4.20 ARTICLE 17 Measurement of Hydrocarbons and By-Products

17.1 The Lessee, using international standard measurement methods, shall measure all Hydrocarbons extracted at their place of extraction and shall also measure all Hydrocarbons and By-Products Produced and Saved pursuant to Article 17.2.

17.2 Representatives of the Lessor shall have the right to be present at and observe such measurement and to examine and test whatever appliances are used. If upon such examination or testing any appliance shall be found to be out of order or defective in any way the Lessor may require that the same be put in order or replaced by the Lessee, and if any such request is not complied with in a reasonable time specified by the Lessor, the Lessor may cause the said appliance to be put in order or replaced and may recover from the Lessee the cost of so doing.

17.3 If upon examination by the Lessor, as aforesaid, any error or defect is discovered in an appliance, such error or defect shall be deemed to have existed for Months prior to its discovery or from the date of the last examination and testing, which ever last occurred, and quantities shall be adjusted accordingly.

17.4 If the Lessee desires to effect modifications to the measuring instruments, it shall give reasonable advance notice to the Lessor to enable the latter's representatives to attend the modifications.

4.21 ARTICLE 18 Satisfaction of Domestic Requirements

Pursuant to, in case of war, danger of war or any other state of emergency, the Lessee shall, upon request by the State, make available to the latter all or a specified portion of its share of the production of Hydrocarbons and By-Products from the Exploitation Area, provided that, if, immediately prior to the exercise of the above entitlement there are several exploitation areas in the same Contract Area or another areas in, the Lessee's contribution pursuant to such request shall be apportioned on a pro rata basis among the lessees of the relevant areas.

4.22 ARTICLE 19 Records, Reports and Data Inspections

19.1 The Lessee shall, as specified in the present Article:

- (a) keep current, complete and accurate records in the State of all Petroleum Operations and its activities in the Contract Area;
- (b) permit the Lessor's representatives to inspect the Petroleum Operations and the records kept according to paragraph (a) above;
- (c) submit to the Lessor all Data, as required pursuant tolaw, and
- (d) maintain the Proprietary Data in and ensure that the Lessor has unrestricted access to such data, as required pursuant to

19.2 The following reports and data shall be supplied to the Lessor without delay upon being drawn up or obtained:

- (a) copies of
copies of [.....]
- (b) copies of records on production tests carried out
- (c) copies of all analysis reports of core samples and sampling procedure followed;
- (d) copies of any other technical reports which may be drawn up regarding the Petroleum Operations; and
- (e) daily production reports and all relevant information related to production.

19.3 The Lessee shall, without delay after their execution, submit (in hard or electronic copy) to the Lessor copies of all contracts entered into by it with suppliers (including Affiliated Enterprises), contractors and sub-contractors and others, subject to Article 25.2 of this Agreement, with respect to Petroleum Operations. The Lessor may ask for clarification of the terms and prices of these contracts.

19.4 The Lessee shall submit to the Lessor detailed quarterly and annual financial and technical reports of its activities under the Agreement. Quarterly reports shall be submitted within Month of the expiration of each Calendar Quarter and the annual report within Months of the end of each Calendar Year.

19.5 The Lessee shall submit representative samples of drilling cores and cuttings taken from each well, as well as samples of production fluids. Upon the expiration of this Agreement, samples of drilling cores and cuttings remaining in the possession of the Lessee shall be delivered up to the Lessor.

19.6 The Lessor acknowledges the proprietary rights of the Lessee in the Proprietary Data, which shall continue to be the property of the Lessee.

19.7 The Lessee shall duly submit, upon request, all Data and Proprietary Data for statistical purposes as may be required under the Law.

19.8 The Lessee shall promptly report to the Lessor every discovery of fossil, significant aquifers and mineral concentrations as per Article 7.2.

19.9 The Lessor shall keep all Data and Proprietary Data received from the Lessee in relation to all parts of the Contract Area confidential. It may, however, subject to the provisions of Articles 19.13 and 19.14, disclose such data under its responsibility and subject to a separate undertaking of confidentiality

being executed, to independent scientific institutions or consultants, acting as the Lessor's adviser in relation to the Petroleum Operations. It may also use the said data in the conduct of an arbitration or during litigation between the Parties.

19.10 The Lessee shall not unreasonably withhold its consent to requests of the Lessor to publish or communicate to independent scientific and academic institutions for scientific purposes, specific parts of the Data, if this can be done without detriment to the Lessee's interests.

19.11 The Lessor and its representatives:

(a) shall have rights to:

(i) access the Contract Area at all reasonable times and reasonable intervals and with reasonable prior written notice to the Lessee, at their own risk (save where injury or damage results from the negligence or wilful misconduct of the Lessee) and expense;

(ii) observe Petroleum Operations; and

(iii) inspect all assets, records, Data and Proprietary Data owned or maintained by the Lessee relating to Petroleum Operations, provided that the Lessor and its representatives shall not interfere with the Petroleum Operations in exercising such rights; and

(b) may make a reasonable number of surveys, drawings, tests and copies for the purpose of monitoring the Lessee's compliance with the terms of this Agreement. In so doing, the Lessor and its representatives shall be entitled to make reasonable use of the equipment or instruments of the Lessee provided that no damage to the equipment or instruments or interference with the Petroleum Operations which results from such use. The Lessor and its representatives shall be given reasonable assistance by the Lessee for such functions, and the Lessee shall afford to the Lessor and its representatives all facilities and privileges afforded to its own personnel in the field, including the use of available office space and housing free of charge.

19.12 Except as provided in Articles 19.10, 19.13 to 19.18, for the term of this Agreement, all Data acquired by the Lessee in the course of this Agreement shall be kept confidential and not reproduced or disclosed to third parties by either Party to this Agreement without the prior written consent of the other party. The Lessee shall treat all State Data as confidential and shall not have any rights over the aforementioned data other than the rights of Article 19.7.

19.13 The Lessor shall keep Data confidential and shall not reproduce or disclose such data to third parties without the prior written consent of the Lessee. Notwithstanding the foregoing the Lessor shall be entitled to reproduce or disclose to third parties Data that relate exclusively to any part of the Contract Area that is relinquished or surrendered by the Lessee in accordance with this Agreement.

19.14 All Proprietary Data shall be kept confidential and not reproduced or disclosed to third parties by the Lessor without the prior written consent of the Lessee. Notwithstanding the foregoing the Lessor shall be entitled to reproduce or disclose Proprietary Data to third parties at the expiry of a period of five (5) years from the termination of this Agreement or from the relinquishment of any part of the Contract Area only for these Proprietary Data which correspond to the area of relinquishment.

19.15 The provisions of Articles 19.13 and 19.14 shall not prevent disclosure by:

(a) the Lessee to the government of the place of its incorporation or of any other jurisdiction in which it operates or any department, agency or instrumentality thereof if required by the law in that jurisdiction or to recognised stock exchanges on which shares of the Lessee or its Affiliated Enterprises are traded if required by law or rules thereof;

- (b) the Lessee to an Affiliated Enterprise or to its contractors or their subcontractors or to their professional advisors, financial institutions or insurance companies if they consider it reasonably necessary for the purposes of conducting Petroleum Operations;
- (c) the Lessee to bona fide prospective assignees of a participating interest in this Agreement, a corporation with which the Lessee or any Affiliated Enterprise is conducting bona fide negotiations directed towards a merger or consolidation or disposal of its share capital, uponcalendar days prior written notice to the Lessor, identifying the parties to which disclosure will be made; provided, however, that the Lessor may veto any such disclosure where a party to which such disclosure is proposed is in bona fide discussions with the Lessor regarding rights to conduct Petroleum Operations in the State or for reasons of national security;
- (d) the Lessee to any party with whom the Lessee is directed by the Lessor to enter into a unitisation programme in accordance with Article 11;
- (e) the Lessor to any Governmental Authority, financial institution or person acting as a consultant or professional adviser to the State; and
- (f) the Lessor and the Lessee to arbitrators and Sole Experts appointed pursuant to this Agreement.

19.16 All Data and Proprietary Data disclosed to third parties under paragraphs (b) to (f) of Article 19.15 shall be disclosed on terms which to the extent possible ensure that the same are treated as confidential by the recipient for so long as such data remains subject to the confidentiality undertakings specified herein.

19.17 Neither the Lessee nor the Lessor shall be bound by the confidentiality undertakings as set forth herein with respect to any Data or Proprietary Data which is in or becomes part of the public domain through no fault of the disclosing Party or which the relevant Party may document that was already known by such Party before the Effective Date or obtained from a third party having the right to disclose such data.

19.18 Nothing in this Article 19 shall require the Lessee, its Affiliate Enterprises, contractors or their sub-contractors to disclose their own proprietary technology unless such disclosure is necessary to the evaluation and undertaking of any data resulting therefrom, provided always that any proprietary technology so disclosed to the Lessor shall be kept confidential by the Lessor until such time as the technology involved ceases to be proprietary to the disclosing Party.

4.23 ARTICLE 20 Transfer and Assignment of Rights and Obligations

20.1 Subject to the provisions of Law:

- (a) The Lessee may transfer in whole or in part its contractual rights and obligations to an Independent Third Party solely upon written consent of Lessor which consent shall not be unreasonably withheld or delayed, and approval by the Minister. The Lessor may refuse consent, if the grounds of law..... or if the Independent Third Party does not meet the criteria referred to in article of the Law..... When giving such consent, the Lessor may set any conditions on the Lessee to safeguard its own interests.

The consent of the Lessor described above shall also be required whenever any interest in an Affiliate Enterprise which controls, directly or indirectly, the Lessee is to be transferred such as to cause a direct

or indirect change in the Control of the Lessee and the Lessee, when seeking such consent, shall provide adequate information concerning corporate structure, capital ownership Control and management.

(b) Subject to the provisions of Law....., the Lessee shall be entitled upon obtaining the prior written consent of the Lessor and approval by the Minister, to transfer, in whole or in part, its rights and obligations under the Agreement to an Affiliate Enterprise, provided that the Lessee shall continue to be, vis-à-vis the Lessor jointly and severally responsible with the transferee Affiliate Enterprise, for the performance of all obligations under the Agreement. The grant of this consent may only be refused on the grounds of Law..... or if the Affiliate Enterprise does not meet the criteria referred to in

20.2 Any transfers of rights and obligations by the Lessee under this Agreement shall only become effective with regard to the Lessor as of the date of service upon it of certified copies of the deed of assignment or any other transfer document. If such transfer takes place during the Exploration Stage or the Special Exploration Stage Extension (as the case may be), the Bank Guarantee of Article 3.7, as reduced from time to time, shall remain valid, binding and enforceable at all times or is appropriately replaced, (if needed).

20.3 No transfer of the operatorship shall be permitted without the prior written consent of the Lessor, which consent shall not be withheld except for reasons of the financial and technical capabilities of the proposed Operator.

4.24 ARTICLE 21 Violations, Lessee's Forfeiture

21.1 If the Lessor considers that Lessee is in default of any of its obligations under the Agreement, the Lessor may give written notice of such default to the Lessee within a time limit of Months from the date on which it has taken cognisance of such default and it shall, in such notice, invite the Lessee to remedy it and to keep the Lessor harmless from any loss or damage caused thereby. If the Lessee fails to remedy its default, or if no amicable settlement is reached between the Parties (each within the following ninety (90) calendar days from the date of service of such notice), the Lessor may terminate this Agreement by further notice to the Lessee.

21.2 The Lessor covenants that the right to declare that the Lessee has forfeited its rights under this Agreement conferred by Lawin the circumstances set out in..... will not be exercised by the Lessor unless:

- (a) the Lessor has, by written notice to the Lessee, given not less than calendar days' notice of its intention to forfeit those rights and stating in detail the reasons for the intended forfeiture;
- (b) the Lessor has, in the notice, specified a date not less than calendar days after the notice before which the Lessee may submit any matter which it wishes the Lessor to consider;
- (c) the Lessor has, in the notice, specified a period of not less thancalendar days to remedy and remove such ground;
- (d) the Lessor has taken into account: -
 - (i) any matter submitted to them by the Lessee pursuant to Article 21.2(b); and
 - (ii) any action taken by the Lessee to remedy and remove that ground.

21.3 Following the execution of this Agreement, the Lessee may not be placed under the control Notwithstanding any of the provisions in this Article 21, breach of this Article 21.3 shall result in the Lessee forfeiting all of its rights under the Agreement following a resolution of

21.4 Any dispute between the Lessor and the Lessee as to whether any event has occurred which pursuant to Article 21.2, would entitle the Lessor to declare that the Lessee has forfeited its rights pursuant to law.....shall be settled by arbitration pursuant to article 23.

21.5 If the Lessor terminates this Agreement, each Party's further rights and obligations cease immediately on termination except that:

- (a) the provisions of Articles 3.1, 6.3, 8.3 to 8.8 (inclusive), shall survive termination; and
- (b) termination does not affect the accrued rights of each Party at the date of termination.

4.25 ARTICLE 22 Insolvency of the Lessee

22.1 If at any time during the term of this Agreement:

- (a) any corporate action, legal proceedings, procedure or other step including without limitation the commencement of a meeting, making of an application, presentation of a petition, the passing of any resolution and/or the making of order occurs and as a result, an order is made or a resolution is passed by a court of competent jurisdiction dissolving, liquidating or winding up (or an analogous procedure) the affairs of the Lessee by reason of the Lessee's insolvency or the inability of the Lessee to meet its payment obligations as they arise in the ordinary course of business; or
- (b) the Lessee makes an assignment for the benefit of its creditors of any substantial part of its assets or a receiver or manager of the Lessee is appointed under a debt instrument or similar security interest,

the Lessor may by -Business Day notice in writing to the Lessee declare that the rights of the Lessee under this Agreement are forfeited, and this Agreement is terminated.

4.26 ARTICLE 23 Settlement of Disputes

A. Amicable settlement

23.1 In the event of any difference between the Parties or any inability or failure by the Parties to agree on any matter regarding the interpretation or implementation of any provisions of this Agreement, (a "Dispute"), the Parties shall first attempt to resolve that dispute amicably through negotiations which shall not exceed a period of days after the receipt by one Party of a notice from the other Party of the existence of such a dispute.

B. Sole expert determination

23.2 In the event of failure of the Parties to reach an amicable settlement within the aforesaid period, any matters that according to this Agreement may be referred for determination to a Sole Expert, will be referred to it in accordance with the following:

(a) The Sole Expert shall be selected and nominated by the Lessor in accordance with withincalendar days (the "Election Period") from submission of a written notification by a Party (the "Initiating Party") to the other Party (the "Receiving Party") of its intention to refer a Dispute for determination to a Sole Expert.

(b) Upon a Sole Expert being selected under the foregoing provisions of this Article, the Lessor shall forthwith notify this Sole Expert of its selection and shall request it to state withincalendar days (the "Acceptance Period") whether or not it is willing and able to accept the appointment. If such Sole Expert shall be either unwilling or unable to accept such appointment or shall not have accepted (the "Disqualified Expert") within the Acceptance Period then the Lessor shall select an alternative Sole Expert within calendar days following the end of the Acceptance Period.

(c) For the purposes of determination by the Sole Expert of the Dispute, each Party shall submit to the Sole Expert withincalendar days (the "Submissions Period") following the Sole Expert's acceptance of appointment to both Parties:

- (i) a description of the Dispute;
- (ii) a statement of its position; and
- (iii) any documents supporting and / or justifying its position.

The Sole Expert may, in its absolute discretion, consider any additional information submitted by either Party and / or any other procedural matters not specifically addressed herein.

(d) The terms of reference upon which the Sole Expert shall seek to resolve a Dispute shall be mutually agreed between the Parties. The parameters within which the Sole Expert shall make its determination shall be strictly within the terms of reference, provided that if the Parties fail to agree on the terms of reference, the Sole Expert shall consider the terms of reference proposed by both Parties and decide upon its own (to which the Parties shall be bound). The Sole Expert shall make its determination in writing and notify the Parties of such determination.

(e) Save in the event of fraud or manifest error, the Sole Expert's determination shall be conclusive and binding on the Parties and shall be delivered within days following the end of the Submissions Period. The decision of the Sole Expert may be referred to arbitration by way of appeal on a point of law, but not on a point of fact. Pending resolution of the dispute by the Sole Expert, there will be no suspension of the Agreement and the Lessee shall have the right and the obligation to continue operations under the Agreement.

(f) If the Sole Expert dies or becomes unwilling or incapable of acting, or does not deliver the determination within the time required by this clause then:

- (i) the Lessor shall promptly select a replacement Sole Expert; and
- (ii) this Article shall apply to the new Sole Expert as if he were the first Sole Expert appointed.

(g) The language to be used for the purposes of the Sole Expert determination shall be English.

(h) The costs of engaging the Sole Expert shall be borne equally by the Lessor and the Lessee. Each Party shall bear its own costs in preparing any materials for and making its presentations to, the Sole Expert.

(i) Each Party shall act reasonably and co-operate in good faith to give full effect to all the provisions of this clause and shall do nothing to hinder or prevent the Sole Expert from reaching his determination.

(j) If the Lessor fails to appoint a Sole Expert (or, as the case may be a replacement Sole Expert) within the time limits prescribed by this Article, then the Lessee shall be entitled to refer the relevant dispute, controversy or claim to arbitration in accordance with the following provisions of this Article.

C. Arbitration

23.3 Any dispute, controversy or claim arising out of or relating to this Agreement, or breach, termination or invalidity thereof between the Parties, which:

- (a) is not to be referred for determination by a Sole Expert under Article 23.1; or
- (b) has been referred to the Sole Expert whose decision is appealed on a point of law; or
- (c) if the Lessor has not appointed a Sole Expert (or, as the case may be, a replacement Sole Expert) within the time limits prescribed by this Article.

shall be finally settled by arbitration.

23.4 The place of arbitration shall be

23.5 The number of arbitrators shall be three; they shall be appointed in accordance with the provisions of Law.....

23.6 The arbitration shall be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce (in force from time to time),

23.7 The language to be used in the arbitral proceedings shall beunless the Parties agree otherwise.

23.8 The award rendered shall be final and conclusive. Judgment on the award rendered may be entered in any court for a juridical acceptance and for enforcement, as the case may be.

23.9 During the period of any arbitration, the time limits set for the fulfilment by either Party shall be suspended to the extent that are related to any pending arbitration.

23.10 Pending resolution of the dispute by the panel of arbitrators, there will be no suspension of the Agreement and the Lessee shall have the right and the obligation to continue operations under the Agreement.

4.27 ARTICLE 24 Performance of the Agreement - Time

24.1 The Lessee shall do everything necessary so as to accomplish the objectives of the Agreement.

24.2 The Parties agree to cooperate harmoniously and in a spirit of good faith with a view to the achievement, as promptly and as efficiently as possible, of the objectives of the Agreement, in strict conformity with all its provisions.

24.3 Time is of the essence in this Agreement.

4.28 ARTICLE 25 Contractors, sub-Contractors, Personnel and Training

25.1 Subject to the following provisions of this Article, the Lessee shall be entitled to employ contractors and the latter shall be entitled to employ sub-contractors for the performance of this Agreement. The Lessee is obliged to submit to the Lessor a copy of any such contracts entered into with contractors (including with Affiliate Enterprises) and, if applicable, of any contracts in accordance with Article 19.3.

25.2 The Lessee shall obtain the Lessor's prior written consent before entering contracts for goods and services for Petroleum Operations except where:

- (a) in the Exploration Stage, the contract (or related series of contracts) is expected to involve expenditure of less than Euro [.... Euro]; or
- (b) in the Exploitation Stage, the contract (or related series of contracts) is expected to involve expenditure of less thanEuro [..... Euro].

If the Lessor has not provided its consent withinCalendar Days from the day of submission, such consent shall be deemed to have been granted. The Lessor shall be entitled to withhold its consent only if it can sufficiently demonstrate at least one of the following reasons:

- I. the contractual consideration substantially diverges from comparable contracts;
- II. the counterparty does not have the technical experience to perform its obligations thereunder;
or
- III. the financial condition of the counterparty according the most recent financial statements available proves it is inadequate to perform its obligations thereunder.

The foregoing provisions of this Article 25.2 do not apply to the extent they would hinder the Lessee from taking all necessary and proper measures for the protection of life, health, the environment and property if there is an emergency (including a significant fire, explosion, Hydrocarbon release or sabotage; incident involving loss of life, serious injury to an employee, contractor or third party, or serious property damage; strikes and riots; or evacuation of personnel)

Notwithstanding the provisions of Article 25.2, the Lessee shall, at any time after the Effective Date, submit to the Lessor its guidelines and procedures that govern the approval that is required for the Lessee to enter into contracts for goods and services for Petroleum Operations.

25.3 [The Lessee, its contractors and any sub-contractors employed by the Lessee, shall be entitled to employ foreign personnel in [Country] for Petroleum Operations.

[The employment of foreign personnel may be regulated herein].

4.29 ARTICLE 26 Force Majeure

26.1 Failure or delay to perform any of their contractual obligations by either the Lessor or Lessee, shall not be regarded as a breach of the Agreement and shall not give rise to any right or claim by either

Party against the other if such failure or delay is due to Force Majeure or to consequences arising therefrom.

26.2 "Force Majeure" means any event beyond the reasonable control of the Party claiming to be affected by it and not caused or contributed to by such Party and shall include, but shall not be limited to, acts of God, epidemics, earthquakes, fires, floods, explosions, strikes, lockouts, wars and state of war, revolutions, civil commotions, insurrections, mutinies and acts of the State or of any foreign government. Force Majeure shall not excuse the failure to pay any sum when due hereunder and a lack of funds shall not constitute Force Majeure.

26.3 If as a result of an event of Force Majeure either the Lessor or the Lessee is prevented from performing its obligations or exercising its rights under this Agreement, the performance of any obligation or the exercise of any right under this Agreement shall be suspended to the extent to which the relevant Party is affected by the said event of Force Majeure and during such time as it lasts and for such reasonable additional time thereafter as might be required for normal resumption of the Petroleum Operations and/or other contractual obligations.

26.4 In the event of Force Majeure, the Party prevented from performing its obligations or exercising its rights under the Agreement shall immediately give to the other Party notice of the nature of the Force Majeure and its probable duration.

26.5 If as a result of an event of Force Majeure Petroleum Operations and/or other contractual rights and obligations hereunder are suspended for more thanMonths, the Parties shall meet to discuss in good faith the continuance or termination of this Agreement. If no agreement can be reached by the Parties withinMonths from the date of the expiry of the aforementionedMonth suspension period, the Lessor or the Lessee may give to the other notice of termination of this Agreement which notice shall become effectiveMonths following the date of service of such notice.

26.6 The Parties agree in particular that in the event that, as a result of a court order or any judicial decision exclusively in respect to a Consent the Exploration Operations are interrupted, such incident shall constitute a Force Majeure event and the provisions of this Article 26 shall apply accordingly, save that the month suspension time period of Article 26.5 shall be extended up to a period ofmonths.

4.30 ARTICLE 27 Suspension of the Exploration Stage

To be regulated: The case where during the Exploration Stage the Lessee wishes to conduct an activity necessary for the performance of Petroleum Operations and satisfaction of the Annual Work Programme in respect of which a Consent is required, and a Response it is not issued within the time limit provided by the law. Procedure and the application of the Lessee cooperation with the Lessor, Suspension period etc

4.31 ARTICLE 28 Notifications – Agent for Service

28.1 Unless otherwise provided in this Agreement, all notices given under this Agreement shall be:

- (a) in writing;
- (b) in English or; and
- (c) delivered personally or by pre-paid recorded delivery (or international courier if overseas) or by fax addressed as follows

If to the Lessor:

If to the Lessee:

Attention:

Fax:

With a copy to:

If to the Lessee:

Attention:

Fax:

With a copy to:

28.2 In the absence of evidence of earlier receipt, and subject to Article 28.3 and 28.4, a notice shall be deemed given and received:

- (a).....

4.32 ARTICLE 29 Modifications of the Agreement

29.1 The terms of this Agreement, may only be modified by written agreement between the Parties and any amendment of its terms shall only be effective upon with the exception of any amendment effected as a result transfer of operatorship, which will be effective in accordance with the provisions of this Agreement and the Law.

29.2 Upon application by the Lessee, time limits for the fulfilment of Lessee's obligations may be extended with the written consent of the Lessor, except for time limits the extensions of which are specifically regulated by the Law.

4.33 ARTICLE 30 Applicable Law

30.1 This Agreement has been executed by the Parties in and in English. In case of any discrepancy, conflict or inconsistency between the two texts, both the English and texts shall be referred to in an attempt to resolve ambiguities but thetext shall prevail.

30.2 This Agreement shall be governed by and construed in accordance with Law.

30.3 If any amendment, deviation, exemption or adjustment to Law made by this Agreement is found to be unconstitutional, the Parties shall negotiate an amendment to this Agreement, with t 30.4
The State shall not be liable to the Lessee if any amendment, deviation, exemption or adjustment to Law made by this Agreement is found to be unconstitutional, or, notwithstanding Clause 30.3.

4.34 ARTICLE 31 Miscellaneous

31.1 This Agreement represents and contains the entire understanding and arrangement of the Parties in relation to the matters dealt with herein and, unless otherwise specified herein, supersedes and replaces from the Effective Date any other understandings and arrangements between the Parties whether written or verbal, relating to such matters.

31.2 In the event of any conflict or inconsistency arising between the main body of this Agreement and any of the Annexes, the provision contained in the main body of this Agreement shall prevail.

31.3 Except where this Agreement expressly provides to the contrary, the rights and remedies contained in this Agreement are cumulative and not exclusive of rights and remedies provided by Law.

4.35 ARTICLE 32 Effective Date of Agreement

.....

IN WITNESS WHEREOF

The Lessor and the Lessee have signed the Agreement through their authorised representative (s) on the above-mentioned date.

For the LESSOR:

For the LESSEE:

4.36 Annexes to the contract

ANNEX A

ELEMENTARY GRID CELLS CONSTITUTING THE CONTRACT AREA

ANNEX B

MAP OF CONTRACT AREA

This Lease Agreement refers to the contract area number of the above map.

ANNEX C

ACCOUNTING PROCEDURE

This Annex is attached to and made part of this Lease Agreement between the Lessor and Lessee.

SECTION 1

GENERAL PROVISIONS

- 1.1 Definitions
- 1.2 Statements required to be submitted by the Lessee

- 1.3 Language and Units of Account
.....
- 1.4 Payments
.....
- 1.5 Prudent Financial Management
.....
- 1.6 Audit and Inspection Rights of the State
.....

SECTION 2

CLASSIFICATION, DEFINITION AND ALLOCATION OF COSTS AND EXPENDITURES

All expenditures relating to the Petroleum Operations which are incurred in accordance with the provisions of the Agreement shall be classified, defined and allocated in relation to the Exploration Area and to each Exploitation Area as follows:

.....

SECTION 3

COSTS, EXPENSES, EXPENDITURES AND CREDITS OF THE LESSEE

SECTION 4

RECORD AND VALUATION OF ASSETS

SECTION 5

EXPLOITATION STATEMENT

5.1 Upon commencement of Commercial Exploitation from the Contract Area, the Lessee shall submit to the Lessor, in accordance with Article 17 of this Agreement, a quarterly exploitation statement (the "Exploitation Statement") showing the following information in relation to each Exploitation Area:

.....

5.2 The Exploitation Statement for the First Period and each Calendar Quarter thereafter in respect of each Month shall be submitted to the Lessor withindays after the end of such period, as the case may be, as per Article 13.7 of this Agreement.

SECTION 6

VALUE OF EXPLOITATION STATEMENT

6.1 The Lessee shall for the purposes of Article 13 of the Agreement prepare a statement providing calculations of the value of Hydrocarbons produced and saved during each Quarter in relation to each Exploitation Area. This Statement shall contain the following information in relation to each Exploitation Area:

.....

6.2 The Value of Exploitation Statement of each Quarter shall be submitted to the Lessor not later than Month after the end of such Quarter.

SECTION 7

STATEMENT OF INCOME AND EXPENDITURE

7.1 The Lessee shall prepare with respect to each Quarter a Statement of Income and Expenditure under the Agreement in relation to each Exploitation Area.

.....

7.2 The Statement of Income and Expenditure of each Quarter shall be submitted to the Lessor no later than..... Month after the end of such Quarter.

SECTION 8

FINAL END-OF-YEAR STATEMENT

8.1 The Lessee shall prepare a Final End-of-Year Statement in relation to each Exploitation Area. This statement shall contain information as provided in but will be based

8.2 Based upon this statement, any adjustments that are necessary will be made to the transactions concerned under the Agreement.

8.3 The Final End-of-Year Statement of each Year shall be submitted to the Lessor withinMonths of the end of such Year.

SECTION 9

BUDGET STATEMENT

The Lessee shall prepare the Annual Work Programme and Budget, as contemplated in Article 5 of the Agreement in relation to each Exploration Area and Exploitation Area. This shall distinguish betweenand shall show the following:

.....

SECTION 10

REVISION OF ACCOUNTING PROCEDURE

The provisions of this Accounting Procedure may be amended by agreement between the Lessee and the Lessor. The amendments shall be made in writing and shall state the date on which the amendments shall become effective.

ANNEX D

APPLICATION FOR CONSENT TO DRILL

(1) The Lessee shall, before drilling any Exploration or Appraisal Well, submit to the Lessor:

.....

(2) An application for consent to drill shall specify details of:

.....

ANNEX E

INSURANCES

(1) The Lessee shall issue and maintain insurance for Petroleum Operations, for such amounts and against such risks as are customarily or prudently insured in the international petroleum industry which shall cover:

.....

(2) The Lessee shall provide the Lessor with the insurance policies or the insurance certificates proving the subscription and maintenance of the above-mentioned insurances. The Lessor approves the relevant insurance policies or insurance certificates and has the right to request the amendment of the same in order to safeguard the compliance of the Lessee with its obligations under this Agreement. In case the Lessor has not provided its approval within calendar days from the date of the submission of the above-mentioned documents to it, the said approval shall be deemed as granted.

ANNEX F

FORM OF BANK GUARANTEE

The intention that a functionally equivalent position is achieved.

5 ELECTRICITY DISTRIBUTION NETWORK MODEL CONTRACT

TABLE OF CONTENTS

ARTICLE 1	SCOPE OF THE AGREEMENT-
ARTICLE 2	DEVELOPMENT MAINTENANCE AND OPERATION OF THE NETWORK
ARTICLE 3	TERM-EFFECTIVE DATE
ARTICLE 4	REGULATE TARIFF-REVIEW OF THE REGULATED TARIFF
ARTICLE 5	TARIFF STRUCTURE
ARTICLE 6	CAPITAL INVESTMENTS AND EFFICIENCY ENHANCING INVESTMENTS
ARTICLE 7	SERVICE COVERAGE AND TERMS AND CONDITIONS
ARTICLE 8	SERVICE STANDARDS AND METERING REPORTING STANDARDS
ARTICLE 9	CUSTOMERS COMPLAINTS
ARTICLE 10	CUSTOMER INVOICES
ARTICLE 11	EFFICIENCY STANDARDS/QUALITY OF SUPPLY
ARTICLE 12	FORCE MAJEURE
ARTICLE 13	TERMINATION
ARTICLE 14	INSURANCE
ARTICLE 15	REPORTING REQUIREMENTS
ARTICLE 16	SETTLEMENT OF DISPUTES
ARTICLE 17	CONFIDENTIALITY
ARTICLE 18	ASSIGNMENT
ARTICLE 19	NOTIFICATIONS - AGENT FOR SERVICE
ARTICLE 20	MODIFICATIONS OF THE AGREEMENT
ARTICLE 21	APPLICABLE LAW
ARTICLE 22	MISCELLANEOUS
ANNEXES	

This Agreement is entered into in..... on the between:

(1) The “.....”, duly represented herein by....., hereinafter referred to as the “.....”;

and

(2), incorporated under the laws of with registered numbers..... whose registered office is athereinafter referred to as the “**Concessionaire**”.

(3) Regulatory Commission

PREAMBLE

WHEREAS the Authority has issued on __.__.201 the Competitive Procedure Documents for the granting of the concession “.....” herein attached as Annex A of this Agreement;

WHEREAS the Concessionaire submitted on __.__. a proposal in response to such bid concerning the Concession “.....”, herein attached as Annex B of this Agreement, which proposal has been accepted by the Authority;

WHEREAS the Authority delivered to the Concessionaire on _____the “Notification of the Winner”, accepting the proposal submitted by the Concessionaire and assigning the Concession to the Concessionaire;

WHEREAS the Authority and the Concessionaire enter this Agreement aiming to implement the Concession in accordance with the terms and provisions set out in this Agreement;

NOW THEREFORE

In the light of the foregoing, the Parties mutually covenant and agree as follows:

DEFINITIONS

“**Agreement**”: means this Distribution Concession Contract and the attached Annexes.

“**Allowed Rate of Return**”:in accordance with this Agreement.

“**Annual Capex Proposal**”: has the meaning given to it in of Annex (capital expenditure);

“Annual Report”: means the report prepared in accordance with, and containing the information required by article 15 of this Agreement.

“Approved Capital Expenditure Plan”: means the capital expenditure plan for the Distribution that comprises solely Capex Items approved by the Regulatory Authority in accordance with Annex 8.

“Business Day” means a day on which retail banks are open for business in [.....].

“Capex Item”: means an item of capital expenditure;

“Concession Area”: the area ofdefined in Annex 1.

“Connection”: the connection of a Consumer's premises to a distribution main of the Network; and ‘Connect’, ‘Disconnect’ and ‘Disconnection’ shall be construed accordingly;

“Connection Charge”: *a charge made by,to a Consumer in respect of the cost of Connection;*

“Consumer”: a natural or legal entity supplied with electricity at premises located in the Distribution Area, which are owned or occupied by such entity.

“Cost of Service”: means the cost to the Concessionaire of providing Standard Service under this Agreement sufficient to meet the Service Standards;

“Customer Standard Contract”: means the written agreement between the Concessionaire and a Customer for the Customer connection of his premises to the Electricity Distribution Network.

“Distribution Network”: means the Concessionaire's electricity distribution network, located in.....or to be *developed by Concessionaire*, including all cables, electrical equipment, and other items which are *owned by the Concessionaire/by the State/Municipality* and which are connected to or which form an integral part of such networks.

“Effective Date”: means the date of this Agreement.

“Efficiency Standards”: means theEfficiency Rate targets and/or System Losses targets as determined in accordance with this Agreement.

“Distribution Activity” means the activity of distribution of electricity in.....

Event of Default means either:

(a) *the Concessionaire, of the State refusing to comply to a material extent, with its obligations under the dispute resolution process under article 16;*

.....;

“Exit Settlement”: *means the settlement of the unconditional transfer of clean and unencumbered legal title to the Business to either a third party, or to the State (or its nominee), pursuant to this Agreement.*

“Extraordinary Event”: has the meaning given to it in article 4 of this Agreement.

“Extraordinary Tariff Adjustment”: means an adjustment to the Regulated Tariff during any Regulatory Period pursuant to, and in accordance with, article 4 and Annex 7.

“Extraordinary Event Notice”: has the meaning given to it in article 4 of this Agreement.

“Financial Year” means the financial year of the Concessionaire from time to time;

“Good Industry Practice”: means the degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, reasonable and experienced distributor with reference to standards in

“Insolvency”: in relation to a person, includes:

- (a) being declared bankrupt or insolvent; or
- (b) having a liquidator or interim liquidator appointed; or
- (c) having a receiver appointed over all or any part of the person’s assets; or
- (d) entering into a composition for the benefit of creditors;

“Metering Reporting Standards”: means the metering reporting standards set out in Annex 3.

“Regulated Tariff”: means the tariff for the provision of Standard Service to a Customer, as set out in Annex 5 and adjusted from time to time in accordance with this Agreement.

“Reset”: means the review conducted by the Commission in accordance with article 4 and Annexes 9 and 10.

“Reset Date”: has the meaning given to it in article 4 of this Agreement.

“Reset Decision”: means the final decision by the Commission on matters required to be determined at each Reset as set out in article 4 and Annex 9.

“Reset Rules”: means the rules in article 4 and Annex 10.

“Service Standards” means the Customer-Specific Standards and Overall Standards set out in Annex 3 (excluding, for the avoidance of doubt, the Metering Reporting Standards), as amended from time to time in accordance with article 4 of this Agreement

“Standard Service”: means the connection of a Customer’s premises to the [Concessionaire’s (if applicable)] electricity distribution network.

“State Authority”: The Government of the Republic of, and every state agency or public law entity; and any local, regional or municipal governmental body, agency or authority of the Republic of; and anybody corporate of which more than fifty per cent (50%) of the voting share capital is owned by, or which is predominantly controlled by, any of the foregoing.

“System Losses”: means the difference between energy injected in the Concessionaire’s distribution network and energy provided to customer connected to the Distribution Network.

“Termination Value”: means the valuation of the Electricity Distribution determined in accordance with Annex 15 [if applicable].

“Tariff Adjustment”: means the adjustment of the Regulated Tariff at the commencement of each Tariff Period pursuant to article 4, and in accordance with Annex 7.

“Tariff Period”: means

“Tariff Structure”: means the categories of tariffs charged by the Concessionaire for the provision of Standard Service, as determined in accordance with article 5.

“Tariff Structure Criteria”: has the meaning set out in Annex

“Valuation Notice”: has the meaning given to it in Annex 15.

5.1 ARTICLE 1 Scope

The Concessionaire is authorised exclusively to exercise the rights of [(a) programming, (b) studying, (c) designing, (d) constructing,] (e) exploiting the electricity distribution network in the area specified in Annex 1 hereto (the “Concession Area”), upon and subject to the conditions set out hereunder.

[Ownership of the network and its expansion, if applies, should be provided]

5.2 ARTICLE 2 [IF APPLICABLE] Development, Maintenance, and Operation of the Network

2.1. Duty to develop, maintain and operate Network

2.1.1 The Concessionaire shall develop, maintain and operate an efficient and economic system of electricity distribution in accordance with this Agreement.

2.1.2 The Concessionaire shall in any event develop the Network by the of the year to at least the minimum extent described in Annex 2.

2.1.3 If, by 31st December of theYear respectively, the progress made by the Concessionaire in developing the Network pursuant to clause 2.1.2 is less than is provided for in Annex 2, the Concessionaire shall submit to the Regulatory Commission a programme setting out the steps which the concessionaire is required to take in order to comply with clause 2.1.2, and shall take all reasonable measures to adhere to such programme.

2.1.4 The Concessionaire will be required to undertake further development of the Network after the 31st December ofyear where the conditions specified in Annex 2 are satisfied in respect of such development.

2.1.5 The Concessionaire shall, in the design, manufacture and installation of any part of the Network, comply with Good Industry Practice.

2.2. System development programmes

2.2.1 The Concessionaire shall prepare and submit to the Regulatory Commission for approval, not later thanin each calendar year, a programme (the "Development Programme") setting out the Concessionaire's proposals for the development of the Network in each of thecalendar years commencing with the following calendar year, and the first of such years shall be the "Development Year".

2.2.2 The Development Programme submitted in any calendar year by the Concessionaire may contain proposals for a particular calendar year which are different from those contained for that year in any Development Programme submitted in a previous calendar year.

2.2.3 The Development Programme shall be deemed to have been approved by the Regulatory Commission unless the Regulatory Commission gives notice of its non-approval to the Concessionaire, not more than days after it was submitted, specifying the reasons for which the Board considers that the Development Programme is not consistent with the requirements as referred to in clause 2.1.1. and 2.2.1.

2.2.4 If the Regulatory Commission gives a non-approval notice to the Concessionaire, the Concessionaire shall, after consultation with the Regulatory Commission, amend the Development Programme in the manner required by the Regulatory Commission, unless the Concessionaire disputes the non-approval notice, subject to the following provisions. The Concessionaire shall not be obliged to amend the Development Programme as required by the Regulatory Commission if the Concessionaire demonstrates that the Development Programme originally proposed by it (or any revised proposal) complies with the requirements referred to in clause 2.1.1.2.2.1. In order to demonstrate such compliance, the Concessionaire shall, withindays after receipt of the non-approval notice, furnish a certified opinion of compliance from an independent institution acceptable to the Regulatory Commission (such asor other similar institution qualified to assess the matter) and the Development Programme as so certified shall be deemed to be approved by the Regulatory Commission.

2.2.5 If there has occurred a change in circumstances since the Development Programme was prepared or approved, and as a result of these changes the Concessionaire wishes to make changes to the Development Programme in relation to its proposals for the Development Year and the Concessionaire reasonably believes that the Development Programme could be revised consistently with the requirements as referred to in Condition 2.1.1.2.2.1:

(a) the Concessionaire may submit to the Regulatory Commission details of such changed circumstances and the proposed revision to the Development Programme;

(b) the Concessionaire may, not sooner than days after its submission to the Regulatory Commission, revise the Development Programme in accordance with the submitted proposal unless the Regulatory Commission has, within such period of days, notified the Concessionaire that

the Regulatory Commission considers that the proposed amendments would not be consistent with the requirements referred to in clause 2.2.1 hereof

If the Regulatory Commission does notify the Concessionaire pursuant to this clause 2.2.5(b), the Concessionaire may revise the Development Programme provided that it demonstrates its compliance with the requirements referred to in clause 2.2.1. by furnishing a certified opinion of consistency of the proposed amendment from an independent institution in accordance with the provisions of clause 2.2.4;

(c) the Concessionaire shall promptly upon making such a revision submit to the Regulatory Commission the revised Development Programme.

2.2.6. It shall be the duty of the Concessionaire to implement the Development Programme in relation to the Development Year.

2.3. Maintenance and operation of the System

2.3.1 The Concessionaire shall carry out all necessary inspection, maintenance, repair and renewal of the Network consistent with any manufacturer's recommendations, and in accordance with the Network Code and Electricity Industry Regulations and Practices and the requirements of clause 2.4.

2.3.2 In particular but without limitation, the Concessionaire shall:

(i) operate and maintain the Network so as to keep the to a level consistent with Industry Regulations and Practices; and

(ii) in particular, where any installation is shown to be defective by reason of, replace installation.

2.3.3 The Concessionaire shall establish as an internal manual the standards and procedures to be followed by its personnel in undertaking the operation, inspection, maintenance, repair or renewal of the Network.

2.4. Network Safety

2.4.1 The Concessionaire shall develop, inspect, maintain and operate the Network, and conduct all activities incidental to such development, inspection, maintenance and operation, so as to minimise the risk of danger to life or property.

The Concessionaire shall prepare, in consultation with the Regulatory Commission, a statement of advice on the potential dangers arising from the use of electricity and the safety measures which should be taken by Consumers to avoid such dangers;

2.4.3 The Concessionaire shall establish and operate a dedicated and continuously manned telephone service, for the reporting by Consumers and members ofcomplying with the following requirements:

(a) use of such service shall be free of charge;

(b) Consumers in any part of the Concession Area shall be able to use a single telephone number to contact such service;

(c) such service shall have sufficient capacity to ensure that, in ninety-nine per cent (99%) of cases, a line will be immediately available to any caller, and calls will be answered in not more than thirty (30) seconds;

(d) the time at which any call is made using such service shall be recorded; and

(e) each call made using such service shall be tape recorded.

2.4.4 The Concessionaire shall arrange that all reasonable publicity shall be given to the telephone service.

2.4.5 Where emergency circumstances exist as a result of which there is a significant in the Network will fall to an unsafe level, the Concessionaire shall take such reasonable steps as are available to it to secure a reduction in demand on the Network with a view to preventing such fall in pressure.

2.4.6 Such a reduction in demand shall be effectuated (so far as practicable) in the following sequence:

(a) first, Consumers having an interruptible supply;

(b) secondly, all Consumers other than Priority Consumers and Special Needs Consumers; and

(c) lastly, Priority Consumers and Special Needs Consumers.

5.3 ARTICLE 3 Term – Effective Date

This Agreement commences and becomes effective on the signing date (Effective Date) and continues for the Agreement Term, unless terminated earlier in accordance with its terms.

The Agreement term commences on the Effective Date and continues for years, unless this Agreement is terminated earlier in accordance with its terms.

ARTICLE 4 Regulated Tariff - Review of the Regulated Tariff

4.1. The Regulated Tariff for the Concession Area at the Effective Date is set out in Annex 5.

4.2. The Regulated Tariff may only be altered in accordance with the terms of this Agreement.

4.3. The Concessionaire must adjust the Regulated Tariff as at the beginning of each Tariff Period in accordance with Annex 5.

Review

4.4. The Regulatory Commission shall conduct a review the issues provided in Annex 10 in accordance with Annex 10) prior to the expiration of each Regulatory Period (the Reset).

4.5. The Regulatory Period shall be the period from the Effective Date until, and thereafter each subsequent Regulatory Period shall be a period of years from the Reset Date in respect of that subsequent Regulatory Period.

4.6. The Regulatory Commission shall proceed with the Reset Decision on or before the scheduled expiration of the current Regulatory Period. If the Commission does not make the Reset Decision on or before the scheduled expiration of the current Regulatory Period, then the Regulatory Period shall continue until the Reset Decision is made.

4.7. The “Reset Date” shall be the first day of the new Regulatory Period, or the date on which the Reset Decision is made in respect of that new Regulatory Period, whichever is the later. The Commission and the Concessionaire may, at any Reset, agree to amend the length of the Regulatory Period.

5.4 ARTICLE 5 Tariff Structure

5.1. The Tariff Structure for the Regulated Tariff as at the Effective Date shall be the Tariff Structure as set out in Annex 5.

5.2. The Tariff Structure for the Regulated Tariff may only be amended in accordance with Annex 6.

5.3. (a) If an Extraordinary Event has occurred, and if either the Concessionaire or Regulatory Commission considers that that Extraordinary Event may create grounds for an Extraordinary Tariff Adjustment, then, subject to clause 5.3(b), that party may submit to the other party a notice (Extraordinary Event Notice) requesting an Extraordinary Tariff Adjustment.

(b) An Extraordinary Event Notice may not be given within months after an Extraordinary Tariff Adjustment.

(c) If the recipient of an Extraordinary Event Notice (First Notice) gives a further Extraordinary Event Notice within Business Days following receipt by it of the First Notice, both Extraordinary Event Notices will be deemed (for the purposes of clause 4.3.(a)) to have been given contemporaneously, on the date on which the First Notice was given.

(d) The provisions of Annex 7 shall apply if an Extraordinary Event Notice is given in accordance with this article 4 of this Agreement.

5.4. Extraordinary Event means the occurrence of any of the following:

(a) a material change in the definition of any of the indices used in adjusting component of the Regulated Tariff;

(b) in any one calendar year the difference between....., exceedspercentage points.

(c) any Force Majeure Event;

(d) any discriminatory treatment by the government of the [country] or its agencies which reduces the revenues of the Concessionaire over any 12-month period or increases the Cost of Service over any month period;

(e) any change in the tax rate applicable to the Activity of Distribution of the Concessionaire greater than(....) percentage points;

(f) any one or more increases or decreases in an existing fee or charge that gives rise to Revenue (including any combination of increases or decreases), or introduction of a new fee or charge that gives rise to Revenue, that changes the Regulatory Revenues of the Concessionaire over anymonth period;

(g) any other event, which is not reasonably foreseeable, not reasonably under the control of either party, and which neither party was required or reasonably expected to provide against, that changes the revenues of the Concessionaire over anymonth period.

5.5 ARTICLE 6 Capital Investments and Efficiency Enhancing Investments

6.1. The Concessionaire shall at all times have an Approved Capital Expenditure Plan and update that plan in accordance with Annex 8.

6.2. If a capital expenditure plan is attached as Annex 8 of this Agreement as at the Effective Date, then that capital expenditure plan shall be deemed to be approved by the Regulatory Commission as an Approved Capital Expenditure Plan. If a capital expenditure plan is not attached as Annex 8 of this Agreement as at the Effective Date, then the Concessionaire shall not be in breach of clause 6.1., provided that

6.3. Capital expenditure undertaken by the Concessionaire in relation to the Distribution Activity shall be added to the [*Regulatory Asset Value*] only in accordance with the provisions of Annex 8.

5.6 ARTICLE 7 Service Coverage and Terms and Conditions

7.1. The Concessionaire must provide Standard Service to all Customers, subject to this Agreement.

7.2. New connections and reconnections

Connection

Subject to clauses 6.2. (2) and 2.3 and 6.2. 2.6, the Concessionaire must offer to provide Standard Service to any natural or legal entity provided:

(a) That it pays:

.....

(b) that it (the entity) complies with the terms and conditions of the Concessionaire's Connection Contract.

Disconnection

Nothing in this article 7 shall prevent the Concessionaire from:

- (a) disconnecting any Customer from the Concessionaire's Electricity Distribution Network and ceasing the provision of Standard Service in accordance with the terms and conditions of an applicable Customer Contract (including, for the avoidance of doubt, for reasons of bankruptcy of the Customer); and
- (b) charging a fee for disconnection that does not exceed the

7.3. The Concessionaire must offer all Customers a tariff for Standard Service not exceeding the Regulated Tariff.

7.4. Any [Standard] Customer Contract must include a right for a Customer to request the Concessionaire to promptly check the accuracy of the Customer's electricity meter.

If the Concessionaire determines that the Customer's electricity meter:

(i) is not measuring the supply of electricity to the Customer to a reasonable degree of accuracy, having regard to reasonable electricity industry standards, then the Concessionaire shall, at the Concessionaire's cost, promptly:

A repair the Customer's electricity meter so that the meter measures the supply of electricity to the Customer to a reasonable degree of accuracy, having regard to reasonable electricity industry standards; or

B replace the Customer's electricity meter with a meter that measures the supply of electricity to the Customer to a reasonable degree of accuracy, having regard to reasonable electricity industry standards;

(ii) is measuring the supply of electricity to the Customer to a reasonable degree of accuracy, having regard to reasonable electricity industry standards, then the Concessionaire may charge the Customer a fee reflecting the reasonable cost to the Concessionaire of checking the accuracy of the Customer's electricity meter.

7.5. (a) Customer Contract must include the right for a Customer to request the Concessionaire to promptly check the supply of electricity to a Customer's installation for compliance with the voltage stability standard set out in item B1 of Annex 3.

(b) If the Concessionaire determines that the supply of electricity to a Customer's installation:

(i) does not comply with the voltage stability standard set out in item B2 of Annex 3, then the Concessionaire shall, at the Concessionaire's cost, promptly take all reasonable steps to comply with the voltage stability standard in respect of the supply of electricity to the Customer's installation;

(ii) complies with the electricity quality and reliability standard set out in item B2 of Annex 3, then the Concessionaire may charge the Customer a fee

7.6. Nothing in a Customer Contract shall be inconsistent with, or otherwise affecting the rights or benefits of a Customer as contemplated by, this Agreement, and the Concession shall not enforce any right under a Customer Contract if that right is in breach of this article 7.

5.7 ARTICLE 8 Service Standards and Metering Reporting Standards

8.1. Subject to clause 12, the Concessionaire shall comply with, and shall carry on the Activity of Distribution in a manner consistent with Network Code, the Service Standards and Metering Reporting Standards set out in Annex 3. For the avoidance of doubt, this means that for each Performance Measure in Annex 1, the Concessionaire must meet, or perform better than, the corresponding standard.

8.2. If the Concessionaire determines, or the Regulatory Commission determines (in accordance with Annex 3), that the Concessionaire must pay a penalty for breach of a Service Standard, then the Concessionaire shall pay the applicable penalty to such person, and in such amount, as set out in Annex 3.

8.3. If the Concessionaire has breached any Service Standard as proved in accordance with and has not otherwise paid the applicable penalty in accordance with clause 8.2, the provisions of Annex 3 shall apply.

8.4. During the period between the Effective Date and, the Regulatory Commission and the Concessionaire shall in good faith review and discuss the Service Standards set out in Annex 3, as at Effective Date to determine whether the Service Standards are:

- (i) consistent with the standard of service that is sought generally by Customers;
- (ii) technically achievable;
- (iii) consistent with Good Industry Practice; and
- (iv) sufficient to ensure the Concessionaire will maintain service quality at levels that are consistent with

5.8 ARTICLE 9 Customer Complaints

[The procedure of handling of complaints by the Concessionaire should be provided]

The nature of the complaint should be provided e.g.,

-an allegation that the Concessionaire has breached the terms of a Customer Contract;

-a dispute over a refusal by the Concessionaire to connect or reconnect a person to the Electricity Distribution Network and provide Standard Service to that person, including a dispute over whether the cost of connection, disconnection and/or reconnection, etc....

-an allegation that the Customer is being required to pay more than a Regulated Tariff (each, a Customer Complaint).

The Authority where the Costumer may seek recourse e.g. Regulatory Commission]

The provisions of Annex 4 shall apply to any Customer Complaint received by the *Commission*?

5.9 ARTICLE 10 Customer Invoice

Concessionaire shall invoice Customers for Standard Service in a manner consistent with Annex 12 Customer invoice.

5.10 ARTICLE 11 Efficiency Standards

11.1. Efficiency targets – System Losses For the period from the Effective Date until 31....., the applicable System Losses target shall be actual System Losses. For the period from until, the applicable System Losses target shall be%

11.2. During the period between the Effective Date and, the Commission and the Concessionaire shall in good faith review and discuss the Efficiency Standards set out in paragraph as at Commencement Date to determine whether the Efficiency Standards are consistent with the following principles:

- (i) The Efficiency Standards must take into account the operating conditions in [area];
- (ii) The long-term benefit to Customers of improving Efficiency Standards must be greater than the long-term costs to Customers;
- (iii) The Efficiency Standards must be technically achievable.

11.3. If, having in good faith reviewed and discussed the Efficiency Standards in accordance with clause 11.2, both the Commission and the Concessionaire agree that the Efficiency Standards set out in 11.1. are not consistent with any of the principles set out in clause 11.2 above, then the Concessionaire and the Commission shall, in good faith and using all reasonable endeavours negotiate with a view to agreeing amendments to the Efficiency Standards set out in 11.1 such that the Efficiency Standards are consistent with the principles set out in clause 11.2. If the Commission and the Concessionaire, having negotiated in accordance with this clause, fail to agree on amendments to the Efficiency

Standards by *[date]* then the Efficiency Standards set out in para 11.1 shall continue to apply until otherwise amended in accordance with this Agreement.

5.11 ARTICLE 12 Force Majeure

12.1. Failure or delay to perform any of their contractual obligations by either Party shall not be regarded as a breach of the Agreement and shall not give rise to any right or claim by either Party against the other if such failure or delay is due to Force Majeure or to consequences arising therefrom.

12.2. "Force Majeure" means any event beyond the reasonable control of the Party claiming to be affected by it and not caused or contributed to by such Party and shall include, but shall not be limited to, acts of God, epidemics, earthquakes, fires, floods, explosions, strikes, lockouts, wars and state of war, revolutions, civil commotions, insurrections, mutinies and acts of the State or of any foreign government. Force Majeure shall not excuse the failure to pay any sum when due hereunder and a lack of funds shall not constitute Force Majeure.

12.3. If as a result of an event of Force Majeure either Party is prevented from performing its obligations or exercising its rights under this Agreement, the performance of any obligation or the exercise of any right under this Agreement shall be suspended to the extent to which the relevant Party is affected by the said event of Force Majeure and during such time as it lasts and for such reasonable additional time thereafter as might be required for normal resumption of contractual obligations.

12.4. In the event of Force Majeure, the Party prevented from performing its obligations or exercising its rights under the Agreement shall immediately give to the other Party notice of the nature of the Force Majeure and its probable duration.

12.5. If the Concessionaire claims a Force Majeure Event under clause 12.1, in addition to the above, it will:

- (a) if the Force Majeure Event prevents the provision of Standard Services, use reasonable endeavours to advise affected Customers of the fact of the cause, and the likely impact of the cause, on the provision of Standard Service; and
- (b) strive to resume, as soon as reasonably possible after the Force Majeure Event has ended, performance by the Concessionaire of its obligations under this Agreement.

5.12 ARTICLE 13 Termination

13.1. Subject to this article 13, the Concessionaire may terminate this Agreement by notice in writing (a Termination Notice) if the State/Municipality or the Regulatory Commission commits an Event of Default.

13.2. Subject to this article 13, the State/Municipality may terminate this Agreement by notice in writing (a Termination Notice):

- (a) at any time, if the Concessionaire is Insolvent;
- (b) at any time, if the Concessionaire commits an Event of Default and:
 - (i) the State/Municipality has given a notice to the Concessionaire (a Default Notice) specifying the Event of Default and requiring that it be remedied within such period as may be specified in the Default Notice (which period must be not less than Business Days following the date of receipt by the Concessionaire of the Default Notice), and the Concessionaire has failed to remedy the Event of Default in accordance with the terms of the Default Notice; and
 - (ii) a Termination Notice given under this clause 13.2 is given withinmonths after the deadline for remedy specified in a Default Notice has ended; or
- (c) at any time, withinmonths of the occurrence of a Sustained Material Breach by the Concessionaire;
- (d) if a Force Majeure Event has occurred and resulted in non-performance of the obligations of the Concessionaire under this Agreement for a period of months, and a Termination Notice given under this clause 13.2 is given within Business Days after the end of the month period;
- (e) for any other reason whatsoever at the will of the State/Municipality during the period that is not less than, and no more than, months prior to a Reset Date.

13.3. The Commission has no right to terminate this Agreement.

13.4. Obligations upon receipt of a Termination Notice

- (a) During the period following receipt of a Termination Notice, given in accordance with clause 13.1 or 13.2, until *exit settlement* [if applicable]:
 - (i) this Agreement shall remain in effect in all respects, except that no further Termination Notice may be given during this period;
 - (ii) the Concessionaire shall operate the Distribution Network in accordance with Annex 14 until the Agreement is terminated under clause 12.5;
 - (iii) subject to clause 13.4(b), the provisions of Schedule 16 shall apply.
- (b) For so long as the Concessionaire is a public enterprise under the Law:
[this case should be regulated separately and probably in deviation of the Annex]

CONSEQUENCES OF TERMINATION

13.5. This Agreement shall terminate upon the completion of the exit settlement.

13.6. Notwithstanding the termination of this Agreement, each of the parties shall remain liable to one another for all obligations incurred prior to the date of termination, including any right pursuant to an arbitrator's decision made in accordance with article 16 either before or after termination but which relates to a Dispute referred to arbitration before termination of this Agreement.

13.7. On termination of this Agreement, clauses [15, 12.6, 12.7.....] shall survive termination, will continue in full force and effect notwithstanding termination of this Agreement.

Note: Various options as to the termination may be agreed upon

Sale/purchase of the "Business"

In case of a Termination Notice may be obliged to sell its Distribution Business in a market sale process (competitive). Any sale may be subject to the consent of the State or Municipality. State or Municipality must give its consent as soon as reasonably possible after being requested in writing by the Concessionaire to do so unless either: i. considers that the relevant purchaser is not capable of performing the obligations of the Concessionaire under this Agreement; or (ii) requests further information to enable it to consider this matter, and such consent, once given, is irrevocable, unless exit settlement does not occur.

If the Concessionaire is unable to sell the Concessionaire's to a third party withincalendar months after the Terminating Party gives a Termination Notice, then the Market Sale Process shall terminate and: the Termination Value of the Electricity Business shall be determined in accordance with Annex; and

as soon as practicable, following delivery of the Valuation Notice delivered pursuant to Annex 15, the State (or its nominee) shall purchase all assets and liabilities of, and settle the purchase of, the distribution activity from the Concessionaire (put option)

(i) in the case of termination of this Agreement by the Concessionaire under clause 13.1, at 100% of the Termination Value stated in the Valuation Notice; or (ii) in the case of termination of this Agreement by the State for cause under clause 13.2(b), 13.2(c) or 13.2(d) at 80% of the Termination Value stated in the Valuation Notice; and (iii) on the basis set out in Annex 15.

Further it may be provided that any sale to the State (or its nominee) shall be on the following basis: (a) the Concessionaire will remain liable for any obligation of the Concessionaire which remains undischarged at the termination time. (b) The Concessionaire shall warrant to the State (or its nominee), on a full indemnity basis for any loss or damage suffered by the State in event of breach of warranty, (i.e. the transfer of business, clean and unencumbered; Following notification of a Termination Notice, the Concessionaire has operated the business in accordance with the provisions of Annex 13).

OR

B. Determination of compensation depending on the reason of termination

Termination due

To a Default by the Concessionaire

To a Default by the State or the Commission

To the occurrence of a prolonged Force Majeure Event

Other

The Termination Cost or the reimbursement of the other party should be provided in accordance with specified procedure in the agreement.

5.13 ARTICLE 14 Insurance

14.1. Insurance shall be maintained by the Concessionaire in accordance with Annex 11.

14.2. The Concessionaire shall submit to the Commission copies of the Concessionaire's insurance policy and shall promptly comply with all reasonable requests for information by the Commission relating to the Concessionaire's insurance arrangements.

5.14 ARTICLE 15 Reporting Requirements

[1. In this article may be provided the obligation of the Concessionaire to submit to the Regulatory Commission

-a Half-Yearly Performance Report

-No later than months following the end of each Financial Year, the Concessionaire an Annual Report, shall contain, in respect of the previous Financial Year:

.....

2.A provision could be inserted a provision according to which the Concessionaire shall appoint an independent auditor to audit the Concessionaire's financial statements. The Concessionaire shall ensure that the auditor submits, in addition to any statements or certificates required by law to be given by the auditor to the Concessionaire or any other person, as part of the Annual Report.

3.Also may be provided that the Concessionaire shall provide to the Commission any information reasonably required by the Commission to perform its functions under this Agreement and/or the Law.

If the Concessionaire fails to comply with any reporting obligation, then the Concessionaire shall pay a penalty to the Commission, calculated in accordance with..... or provided by the law].

5.15 ARTICLE 16 Settlement of Disputes

A. Amicable settlement

16.1 In the event of any difference between the Parties or any inability or failure by the Parties to agree on any matter regarding the interpretation or implementation of any provisions of this Agreement, (a "Dispute"), the Parties shall first attempt to resolve that dispute amicably through negotiations which shall not exceed a period of days after the receipt by one Party of a notice from the other Party of the existence of such a dispute.

B. Independent Expert

[The appointment of an Independent Expert may be provided]

The parties shall withinBusiness Days of the date on which the Independent Expert is appointed, submit to the Independent Expert and to the other party the following documents:

.....]

C. Arbitration

[Arbitration clause should be inserted]

5.16 ARTICLE 17 Confidentiality

The following should be provided:

- Authorised disclosure
- Publication of certain information.

5.17 ARTICLE 18 Assignment and transfer

Except as provided in Annex 14, no party may assign or otherwise transfer any of its rights or obligations under this agreement to any other person, without the prior written consent of each other party (EXIT SALE PROCESS)

5.18 ARTICLE 19 Notifications – Agent for Service

19.1 Unless otherwise provided in this Agreement, all notices given under this Agreement shall be:

- (a) in writing;
- (b) in English or; and
- (c) delivered personally or by pre-paid recorded delivery (or international courier if overseas) or by fax addressed as follows

If to the State/Municipality:

Attention:

Fax:

With a copy to:

If to the Regulatory Commission:

Attention:

Fax:

With a copy to:

If to the Concessionaire:

Attention:

Fax:

With a copy to:

19.2 In the absence of evidence of earlier receipt, and subject to Article 19.3 and 19.4, a notice shall be deemed given and received:

- (a).....

19.3.

19.4.

5.19 ARTICLE 20 Modifications of the Agreement

The terms of this Agreement may only be modified by written agreement between the Parties and any amendment of its terms shall only be effective upon with the exception of any

amendment effected as a result transfer of operatorship, which will be effective in accordance with the provisions of this Agreement and the Law.

[Procedure for modification]

5.20 ARTICLE 21 Applicable Law

21.1 This Agreement has been executed by the Parties in and in English. In case of any discrepancy, conflict or inconsistency between the two texts, both the English and texts shall be referred to in an attempt to resolve ambiguities but thetext shall prevail.

21.2 This Agreement shall be governed by and construed in accordance with Law.

5.21 ARTICLE 22 Miscellaneous

22.1 This Agreement represents and contains the entire understanding and arrangement of the Parties in relation to the matters dealt with herein and, unless otherwise specified herein, supersedes and replaces from the Effective Date any other understandings and arrangements between the Parties whether written or verbal, relating to such matters.

22.2 In the event of any conflict or inconsistency arising between the main body of this Agreement and any of the Annexes, the provision contained in the main body of this Agreement shall prevail.

22.3 Except where this Agreement expressly provides to the contrary, the rights and remedies contained in this Agreement are cumulative and not exclusive of rights and remedies provided by Law.

IN WITNESS WHEREOF

The/the Municipality of, the Concessionaire and the Regulatory Authority have signed the Agreement through their authorised representative (s) on the above-mentioned date.

For the:

For the:

For the:

5.22 Annexes

ANNEX 1

CONCESSION AREA

ANNEX 2

DEVELOPEMENT OF THE NETWORK

ANNEX 3

SERVICE STANDARDS-PENALTIES

This Annex should include, as a minimum,

Customer Specific standards

Connections

Item	Performance Measure	Unit	Standard	Penalty
------	---------------------	------	----------	---------

Customer Connections and Billing Standards

Item	Performance Measure	Units	Standard	Penalty
------	---------------------	-------	----------	---------

Continuity of Supply

Item	Performance Measure	Units	Standard	Penalty
------	---------------------	-------	----------	---------

Voltage Stability

Item	Performance Measure	Unit Working days	Standard	Penalty
Responding to a request by Customer under clause 7.5 relating to voltage fluctuations	Maximum period to complete a spot check of the Customer's voltage after a Customer request			
Customer-specific Voltage stability (tested in response to				

request by a Customer under clause 7.5				
--	--	--	--	--

B. Overall Standards

B.1. Customer Service and Billings Standards

Item	Performance Measure	Unit	Standard
Number of complaints to the service provider Total	Total telephone and written complaints per 1,000 customers per annum	Number	Report

B.2. Electricity Quality

Item	Performance Measure	Unit %	Standard +_
Voltage fluctuations are to be tested in the following ways: 			

Metering Reporting Standards

Item	Performance Measure	Units	Standard report
Frequency of metering testing	Report on the percentage of Customers' meters	%	

	that are tested for accuracy or replaced annually		
--	---	--	--

ANNEX 4

CUSTOMER COMPLAINTS

Procedure

Resolution

ANNEX 5

REGULATED TARIFF

This Annex provides at least:

Initial Regulated Tariff and Components of the Regulated Tariff

Procedure for Adjustment of Regulated Tariff

Indexation of

ANNEX 6

ADJUSTMENT OF TARIFF STRUCTURE

a. Criteria

(a) Any proposed new Tariff Structure must comply with the following criteria (the Tariff Structure Criteria):

.....

b. Process

(a) *If the Concessionaire wishes to amend the Tariff Structure, it must submit its proposal (Tariff Structure Proposal) to the Commission.*

(b) *The Tariff Structure Proposal must:*

The Commission.....

ANNEX 7

PROCESS FOR EXTRAORDINARY TARIFF ADJUSTMENT

ANNEX 8

CAPITAL EXPENDITURE

Annual Update of Approved Capital Expenditure Plan
Contents of Annual Capex Proposal
Criteria for Approval by Commission of Annual Capex Proposal
Procedure for approval of Annual Capex Proposal
Adjustments to Regulatory Asset Value

ANNEX 9

PROCESS FOR RESET

ANNEX 10

RESET RULES

ANNEX 11

INSURANCES

The Concessionaire must have insurance that is sufficient to cover:

Physical damage to the assets of the Electricity Network, of an amount equal to or greater than the replacement cost of all assets and% of the replacement costs of all other assets of the Electricity Network.

Business interruption, for an amount reasonable for comparable businesses.

Third party claims for damage to property or for personal injury, for an amount reasonable for comparable businesses.

ANNEX 12

CUSTOMER INVOICES

Mandatory principles-Minimum content.

ANNEX 13

OPERATION OF ELECTRICITY NETWORK ON

TERMINATION

During the period from the date a Termination Notice is given in accordance with this Agreement, until such time as this Agreement is terminated in accordance with clause 13.5, the Concessionaire will:

-

-ANNEX 14

EXIT SALE PROCESS When the concession expires

ANNEX 15

DETERMINATION OF TERMINATION VALUE

Application

Process for appointing independent valuer

Available Information

Process for determining valuation

Value principles Termination Value

6 POWER GENERATION FACILITY CONCESSION AGREEMENT

[Solar] Renewable Energy Power Purchase Agreement

TABLE OF CONTENTS

ARTICLE 1	SCOPE OF THE AGREEMENT-OBLIGATIONS OF THE PARTIES
ARTICLE 2	CONDITIONS PRECEDENT
ARTICLE 3	AGREEMENT TERM AND SUPPLY TERM
ARTICLE 4	BANK GUARANTEE
ARTICLE 5	OPERATING COMMITTEE
ARTICLE 6	NETWORK OPERATORS ASSETS
ARTICLE 7	THE FACILITY
ARTICLE 8	TESTING AND COMMISSIONING OF FACILITY
ARTICLE 9	EXTENSIONS AND DELAYS
ARTICLE 10	OPERATION AND MAINTENANCE OF FACILITY
ARTICLE 11	DELIVERY AND ACCEPTANCE OF ELECTRICITY
ARTICLE 12	SITE METERS
ARTICLE 13	PAYMENT AND INVOICING
ARTICLE 14	TAXATION
ARTICLE 15	CHANGES TO FACILITY AND TRANSMISSION SYSTEM
ARTICLE 16	CHANGES IN LAW
ARTICLE 17	FORCE MAJEURE
ARTICLE 18	DEFAULT
ARTICLE 19	TERMINATION
ARTICLE 20	EXTENSION OF THE SUPPLY TERM OR SALE/PURCHASE OF FACILITY
ARTICLE 21	INSURANCE

ARTICLE 22 INTELLECTUAL PROPERTY
 ARTILCE 23 CONFIDENTIALITY
 ARTICLE 24 SETTLEMENT OF DISPUTES
 ARTICLE 25 ASSIGMMENT CHANGE IN CONTROL AND OTHER RESTEICTIO
 ARTICLE 26 CONTRACTORS, SUB-CONTRACTORS, PERSONNEL
 ARTICLE 27 NOTIFICATIONS - AGENT FOR SERVICE
 ARTICLE 28 MODIFICATIONS OF THE AGREEMENT
 ARTICLE 29 APPLICABLE LAW
 ARTICLE 30 MISCELLANEOUS
 ANNEXES

This Agreement is entered into in..... on the20.. by and between:

The [**Transmission System Operator**], duly represented herein by....., hereinafter referred to as the "**Buyer**";

and, incorporated under the laws of with registered number..... whose registered office is athereinafter referred to as the "**Seller**".

PREAMBLE

WHEREAS, the Seller is the developer of the Project.

WHEREAS, the Buyer is authorised by Law to purchase and sell electricity to customers in the Republic of [*country*].

WHEREAS, The Seller has agreed to sell, and the Buyer has agreed to buy, all Electricity generated by the Facility at the FiT Rate on the terms and conditions set out in this Agreement.

NOW THEREFORE

In the light of the foregoing, the Parties mutually covenant and agree as follows:

DEFINITIONS

Unless the context otherwise requires, the following words and phrases have the meanings hereinafter assigned to them:

“Abandon”: 1. In respect of the period from the Conditions Satisfaction Date until the Commercial Operation Date, where the Seller fails to:

- (a) commence continuous construction work at the Site within Days of the date set out in the Implementation Schedule except by reason of a delay or default by a Principal Party under a Principal Project Agreement that causes that failure, or by reason of a Force Majeure Event;
 - (b) undertake construction work for a period in excess of ... consecutive Days except by reason of a delay or default by a party under a Principal Project Agreement that causes that failure, or by reason of a Force Majeure Event; or
 - (c) resume work within ... Days after a 'Default' (however that term is defined in the relevant Principal Project Agreement) by a party under a Principal Project Agreement has been remedied, or following termination or cessation of a Force Majeure Event; and
2. in respect of the Supply Term, the Seller fails to operate the Facility for ... consecutive Days, or any longer period of time, except by reason of a breach by a party under a Principal Project Agreement that causes that failure, or by reason of a Force Majeure Event, and except when otherwise relieved of the obligation to do so by the express provisions of this Agreement.

“Actual Delivered Output”: the quantity of Electricity delivered to the Delivery Point from the Facility as measured by the Site Meter or otherwise calculated or determined by the Operating Committee or the Network Operator pursuant to the procedures under the Network Connection Contract.

“Affected Party”: is defined in clause 17.1. of this Agreement.

"Affiliate Enterprise" means in relation to the Seller, a company or other legal entity, or a natural person which is, directly or indirectly controlled by the Seller and any company or another legal entity or person which controls or is controlled, directly or indirectly, by a company or a legal entity or a natural person which Controls or is controlled by the Seller.

"Agreement": means this agreement including the Annexes.

“Agreement Term”: the term of this Agreement commencing on the Signing Date and ending on the last Day of the Supply Term.

“Anticipated Date for Provisional Completion”: in respect of the Network Operator’s Assets, the anticipated date of Provisional Completion of the Network Operator’s Assets set out in Annex 7.

"Bank Guarantee": means a payment guarantee by a first-class bank lawfully operating in the European Union/..... with a branch or established correspondent banking relationship with a first-class bank in, acceptable to the Buyer, substantially in the form set out in Annex 12.

"Business Day": means a day (other than a Saturday or Sunday) on which banks generally are open for business in [country].

“Change Effect”:see article 16 Change.

“Claim”: any and all suits, sanctions, legal proceedings, claims, actions, assessments, judgments, penalties, demands or fines brought or enforced against a Party (including any claim for payment, whether based on contract, tort or Law).

“Commercial Operation Date”: the Day following the date on which the Operating Committee has confirmed in writing that all of the Commercial Operation Date Criteria have been achieved in accordance with clauses 8.15, 8.16, 8.17 of this Agreement.

“Commercial Operation Date Criteria: the Operating Committee Notifies the Seller the Test Verification Certificate can be accepted in accordance with article 8 of this Agreement. .

“Conditions Precedent” the conditions precedent to this Agreement, being the Buyer’s Conditions and the Seller’s Conditions, as set out in Annex 1.

“Conditions Satisfaction Date”: the date determined in accordance with article 2 of the Agreement.

“Contract /Subcontract”: the engineering, procurement and construction contract to be entered into between the Seller and a contractor in respect of the design, procurement, construction, erection, installation, testing and commissioning of the Facility, as amended or replaced.

“Contractor /Subcontractor”: the Subcontractor that enters into a contract with the Seller.

“Deemed Delivery Event”: any of the following events or circumstances which occur on or after the Commercial Operation Date:

1 a failure by the Buyer to take delivery of Electricity at the Delivery Point (when Electricity would otherwise have been available for delivery at the Delivery Point), other than where the failure to take delivery arises due to:

(a) the Default or wrongful or unlawful act of the Seller, its officers, employees, Subcontractors, agents or Affiliates, including any failure to comply with the terms of any Authorisation, this Agreement, the Network Connection Contract, or any other Project Agreement; or (b) a Force Majeure Event affecting the Seller, provided that, for clarity, Electricity will not be considered to be unavailable for delivery at the Delivery Point due only to constraints on the Transmission System other than constraints arising from the matters described in 1(a) above;

2 a failure by the Seller to deliver Electricity to the Delivery Point which is a direct consequence of:

(a) a breach of this Agreement by the Buyer;

(b) a Change in Law; or

(c) a breach of any Principal Project Agreement other than this Agreement.

“Deemed Delivered Electricity”: has the meaning given in Annex 6.

“Delay Costs”: is defined in article 9.4. of this Agreement.

“Delivery Point”: the point or points for: 1. the delivery of Electricity generated by the Facility and provided to the Transmission System; and 2. *the import of Electricity from the Transmission System, as described in the Design and Technical Specifications, and which, for clarity, forms part of the Facility.*

“Design and Technical Specifications”: the design and technical specifications for the Facility that the Seller must comply with when designing and constructing the Facility, as set out in Annex 2.

“Facility”: the renewable energy facility of the Installed Capacity which is to be designed, procured, constructed, erected, installed, tested, commissioned, financed, owned, operated and maintained by the Seller at the Site as part of the Project (*including all the Connection Facilities and the Energy Measurement Equipment.....*) which is further described in the Design and Technical Specifications.

“FiT Rate”: the FiT Rate specified Annex 6.

“Generating Unit” a separate *photovoltaic* electricity generation unit or section (comprising multiple units) forming part of the Facility, which is capable of generating and delivering Electricity to the Buyer

at the Delivery Point and having the characteristics described in the Design and Technical Specifications.

“Good Utility Practice”: those practices, methods and acts, which are compliance with good standards of prudence applicable to the international electricity generation industry and the *solar* energy industry which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with compliance with Laws and Authorisations, reliability, safety and expedition.

“Implementation Schedule”: the program and schedule for the design, procurement, construction, erection, installation, testing and commissioning of the Facility and the implementation of the Project generally, which identifies the key milestones and their respective milestone dates, as set out in Annex 5, as may be revised from time to time pursuant to this Agreement.

“Insolvency Event”: [.....]

“Installed Capacity”: in respect of the Facility, the maximum aggregate rated capacity, in MWac, of all inverters installed in the Facility, being the amount set out in Annex 14 of this Agreement.

“Network Connection Contract”: the contract entered into on the Signing Date between the Network Operator and the Seller (as 'Power Producer') under which the Network Operator grants the Seller the right to connect the Facility to the Transmission System and to deliver Electricity to the Transmission System.

“Network Operator”: the Network Operator under the Network Connection Contract. As at the Signing Date, the *Network Operator is the Buyer*.

“Network Operator’s Assets”: the assets required for the interconnection of the Connection Facilities to the high voltage parts of the Transmission System which are to be designed, constructed, tested and commissioned by the Network Operator in accordance with the Network Connection Contract as described in Annex 4.

“Principal Project Agreements”: *this Agreement; the Cost Sharing Agreement; the Network Connection Contract; the Usufruct Agreement; the PPA Direct Agreement. -INDICATIVELY*

“Project”: the development of the Facility and its connection to the Transmission System.

“Provisional Completion”: in respect of the Network Operator’s Assets, 'Provisional Completion' of the 'Interconnection Works', as that term is defined in the Agreement.

“Scheduled Commercial Operation Date”: the date by which the Facility must satisfy the Commercial Operation Date Criteria, as set out in Annex 14 of this Agreement, as extended in accordance with this Agreement.

“Scheduled Conditions Satisfaction Date”: the date by which the Conditions Precedent must be satisfied, as set out Annex 1 and as may be extended in accordance with this Agreement.

“Signing Date”: the date of this Agreement.

“Site”: the land the subject of the Usufruct Agreement on which the Project will be undertaken by the Seller in accordance with the Principal Project Agreements.

“Supply Term”: is defined in clause 3.2. of this Agreement.

“Test Verification Certificate”: a certificate from a Testing Expert confirming that the Facility: i. has been designed and constructed in accordance with the Design and Technical Specifications; and ii has successfully completed the Facility Performance Test in accordance with the requirements of Annex 3.

“Testing Expert”: the expert that is as approved by the Buyer in accordance with article 8 of this Agreement.

“Usufruct Agreement”: the usufruct agreement between [AUTHORITY] and the Seller (as 'User'), where the former allows the Seller to construct the Facility on the Site and sell Electricity to the Buyer.

INTERPRETATION

In this Agreement, subject to any express contrary indication:

- (a) any reference to an Article shall be construed as a reference to an article of this Agreement and any reference to an Annex shall be to an annexure to this Agreement;
- (b) any reference to a person shall be construed as including:
 - (i) any person, firm, company, Governmental Authority, corporation, society, trust, foundation, government, state or agency of a state or any association or partnership (in each case whether or not having separate legal personality) of two or more of these;
 - (ii) a reference to the successors, permitted transferees and permitted assignees of any of the persons referred to in sub-paragraph (i) above;
- (c) any reference to this Agreement or any other agreement or document shall be construed as a reference to that agreement or document as it may have been, or may from time to time be, amended, replaced or supplemented;
- (d) any reference to a Law shall be construed as a reference to it as it may have been or may from time to time be (with or without modification) amended or re-enacted and any subordinate legislation made, or thing done, or may from time to time be done.
- (e) capitalised terms used in this Agreement shall have the meaning ascribed to them in the Definitions section or elsewhere in the Agreement.

6.1 ARTICLE 1 Scope of the Agreement – Obligations of the Parties

1.1. Subject to the other provisions of this Agreement:

- (a) the Seller will design, procure, construct, erect, install, test, commission, finance, own, operate and maintain the Facility in accordance with this Agreement;
- (b) the Seller will undertake the Project in the manner contemplated by this Agreement;
- (c) the Facility will be located on the Site;

- (d) the Seller will sell all Electricity generated by the Facility to the Buyer (other than Electricity necessary for the Seller to operate the Facility);
- (e) at the expiration of the Agreement Term, the Seller will decommission and remove the Facility from the Site in accordance with the Usufruct Agreement; and
- (f) without limiting clauses 1.1(a) to 1.1(e) (inclusive), the Seller must perform the Seller's Obligations.

2.2. Without limiting the other provisions of this Agreement, the Buyer should:

- (a) design, procure, construct, erect, install, test, commission, own, operate and maintain the Network Operator's Assets in accordance with the Network Connection Contract;
- (b) subject to the limits set out in this Agreement, purchase Electricity generated by the Facility and delivered to the Delivery Point;
- (c) make the payments to the Seller described in this Agreement; and
- (d) provide reasonable assistance to the Seller to obtain Authorisations required in accordance with this Agreement, including those Authorisations required under clause 1.4 below, provided that nothing in this 1.2(d) obliges the Buyer to incur any costs in assisting the Seller, or to intervene with any Government Agency, in connection with any Authorisation.

1.3. Except as otherwise expressly provided in this Agreement (but without limiting the terms of any other Project Agreement), the Seller accepts and will bear all risks associated with the undertaking of the Project including:

- (a) all risks associated with the costs of designing, procuring, constructing, erecting, installing, testing, commissioning and financing the Facility;
- (b) the operation and maintenance of the Facility and the generation of Electricity by the Facility; and
- (c) the decommissioning and removal of the Facility from the Site in accordance with the Usufruct Agreement.

1.4. The Seller must comply with the requirements of all Laws and Authorisations in any way affecting or applicable to the performance of the Seller's Obligations and its obligations under the other Project Agreements.

The Seller must obtain, maintain and renew all Authorisations necessary and in sufficient time for it to undertake the Project and to otherwise perform the Seller's Obligations and its obligations under the other Project Agreements, including all Authorisations required to:

- (1) enter into this Agreement;
- (2) design, procure, construct, erect, install, test and commission and finance the Facility;
- (3) own, operate and maintain the Facility and sell Electricity generated by the Facility to the Buyer under this Agreement; and

- (4) upon expiration of the Agreement Term, decommission and remove the Facility from the Site in accordance with the Usufruct Agreement.

The Seller must, at the Buyer's request and in addition to any obligation to provide copies of any Authorisation in satisfaction of a Seller's Conditions, promptly provide the Buyer with a certified copy of all Authorisations referred to in clause.

Without limiting any other provision in this Agreement, if any Authorisation is revoked or withdrawn, the Seller must:

- (1) immediately inform the Buyer in writing of that revocation or withdrawal, and the impact of that revocation or withdrawal on the Seller's ability to perform the Seller's Obligations and its obligations under the other Project Agreements; and
- (2) promptly take all necessary procedures to regain or renew that Authorisation.

6.2 ARTICLE 2 (if applicable) Conditions Precedent

2.1. (a) Subject to clause 2.1(k) below, this Agreement is subject to and conditional upon the fulfilment or waiver of all of the Conditions Precedent in Annex 1.

(b) The Seller must use Reasonable Endeavours to procure the fulfilment of the Seller's Conditions by the Scheduled Conditions Satisfaction Date in Annex 1.

(c) The Buyer must use all Reasonable Endeavours to procure the satisfaction of the Buyer's Conditions by the Scheduled Conditions Satisfaction Date.

(d) Each Party must provide reasonable assistance to the other Party in connection with the satisfaction of the Conditions Precedent, provided that nothing in this article 2.1 obliges either Party to incur any significant out of pocket expenses.

(e) Once the Conditions Precedent have been satisfied or waived in accordance with this article, the Buyer must issue a Notice to the Seller:

(1) confirming that the Conditions Precedent have been satisfied or waived in accordance with this para 2.1., and

(2) advising the Seller of the FiT Rate that will apply to this Agreement from the Conditions Satisfaction Date, (FiT Rate Notice). The Buyer must ensure that the FiT Rate Notice issued by it complies in all material respects with the form of the FiT Rate Notice set out in Annex 6.

(f) The following clauses of this Agreement are not conditional on the satisfaction or waiver of all of the Conditions Precedent and are effective on and from the Signing Date:

- (1) article 2 (Conditions Precedent);*
- (2) article 3.1 (Agreement Term);*
- (3)*

.....
.....

2.2. Each Party must promptly Notify the other if it becomes aware that any Conditions Precedent have been satisfied or have become incapable of being satisfied.

2.3. Without limiting clause 2.2, the Seller must provide the Buyer with a written updated report at least every.....Months from the Signing Date to the Conditions Satisfaction Date that describes the Seller's progress in satisfying the Seller's Conditions and the activities scheduled to be taken by the Seller in the satisfaction of the Seller's Conditions during the forthcomingMonths.

2.4. At any time prior to the Scheduled Conditions Satisfaction Date, the Buyer may waive any of the Seller's Conditions set out in Annex 1 by Notice to the Seller.

2.5 Extension of Scheduled Conditions Satisfaction Date for certain delay events occurs:

(a) If the Seller is delayed in achieving any of the Seller's Conditions due to a *[could be a delay to issue any Authorisation]* then the Buyer, acting reasonably, must adjust the Scheduled Conditions Satisfaction Date by the length of time the Seller is delayed in achieving the relevant Seller's Conditions due to

(b) If the Buyer is delayed in achieving any of the Buyer's Conditions by the Scheduled Conditions Satisfaction Date, then the Buyer, acting reasonably, must adjust the Scheduled Conditions Satisfaction Date by the length of time the Buyer is delayed in achieving the Buyer's Conditions, provided that the Buyer must not extend the Scheduled Conditions Satisfaction Date by more thanBusiness Days in the aggregate for all delays in achieving the Buyer's Conditions.

2.6 Subject to clause above, if the Conditions Precedent have not been satisfied or waived by the Scheduled Conditions Satisfaction Date, then within Business Days of the Scheduled Conditions Satisfaction Date:

- (1) the Parties may agree in writing to extend the Scheduled Conditions Satisfaction Date by a reasonable period of time to satisfy any outstanding Conditions Precedent; or
- (2) either Party may terminate this Agreement by Notice to the other Party without the need for any other legal or judicial procedure, in which case clause 2.7. applies.

If the Scheduled Conditions Satisfaction Date is extended in accordance with clause 2.5 or clause 2.6 (1), the Scheduled Commercial Operation Date and each *Anticipated Date for Provisional Completion* will be extended by the period of the extension of the Scheduled Conditions Satisfaction Date.

2.7. If this Agreement is terminated by a Party in accordance with clause 2.6, then:

- (a) if provided prior to satisfaction or waiver of the Conditions Precedent, the Buyer must return the Letter of Guarantee to the Seller;
- (b) each Party is released from its obligations to further perform its obligations under this Agreement, except those expressed to survive termination; and
- (c) each Party retains the rights it has against the other in respect of any breach of this Agreement occurring before termination.

(Financing Documents and PPA Direct Agreement)

The Buyer acknowledges that, as part of the satisfaction of the Conditions Precedent to this Agreement:

- (a) the Seller will enter into certain Financing Documents with Financing Parties for the Project; and*
- (b) the Seller will execute the PPA Direct Agreement with the Financing Parties, the Buyer and the Ministry of Finance???.*

6.3 ARTICLE 3 Agreement Term and Supply Term

3.1. This Agreement commences and becomes effective on the Signing Date and continues for the Agreement Term, unless terminated earlier in accordance with its terms.

3.2. The supply term commences on the Commercial Operation Date and continues for years (Supply Term) unless this Agreement is terminated earlier in accordance with its terms.

6.4 ARTICLE 4 Bank Guarantee

4.1. On or prior to the Conditions Satisfaction Date the Seller must provide the Bank Guarantee to the Buyer as security for the performance of the Seller’s Obligations from the Conditions Satisfaction Date to the Commercial Operation Date in accordance with Annex 12 of this Agreement.

4.2. *[the cases when the Byer shall have full recourse to bank guarantee should be included]*

4.3. The Seller must ensure that the Bank Guarantee is maintained in full force and effect from the date on which it is required to be provided under clause 4.1 to the date it is required to be returned in accordance with the terms of this Agreement.

The Seller must replace or extend the Bank Guarantee, as the case may be:

[.....]

4.4. All costs, fees, expenses or other disbursements incidental to the provision, maintenance and release of the Bank Guarantee must be borne by the Seller.

4.5 The Buyer must return the Bank Guarantee or any cash security if the Buyer holds cash security in accordance with this clause to the Seller within the later of:

- (a) ... Business Days after the Commercial Operation Date; and
- (b) the date on which there are:

[.....]

no amounts that are due and payable by the Seller to the Buyer in respect of conduct occurring on or prior to the Commercial Operation Date remain unpaid; and

.....]

6.5 ARTICLE 5 Operating Committee

5.1. The Parties shall withincalendar days of Signing Date establish a committee to be known as the Operating Committee to perform competences under the Network Connection Contract and, with the consent of the Parties and subject to clause 5.3 below.

5.2. The Committee which shall consist of:

.....

5.3. The Parties acknowledge and agree that the Operating Committee's sole role and authority in connection with this Agreement is to make the certifications required under article 8, and to take responsibility for meter reading under the Network Connection Contract. Decisions of the Operating Committee will be by simple majority of all members of the Operating Committee, after giving those members a reasonable opportunity (but in any event at least one Week) to consider the relevant matter.

5.4. The Operating Committee will be required to reach a decision within weeks of submission of a request for certification or such longer period as the Parties may agree. All decisions of the Operating Committee will be final and binding on both Parties and are not subject to appeal.

6.6 ARTICLE 6 Network Operators Assets

6.1. *Subject to para 6.3 below, the Buyer must procure that the Network Operator uses its Reasonable Endeavours to achieve*

6.2. If the Buyer becomes aware that the Network Operator will be delayed or disrupted in completing the Network Operator's Assetsthe Buyer must, by no later than 5 Business Days after becoming aware, or when it ought to have become aware, give the Seller Notice stating:

- (1) the details of the delay or disruption, and
- (2) the steps, if any, the Network Operator proposes to take to eliminate or minimise the delay or disruption.

6.3. If, and to the extent that, the construction and testing processes for the Network Operator's Assets are delayed due to:

- (1) a Force Majeure Event;
- (2) an Emergency which subsists on a substantially continuous basis for a period not exceeding 72 hours;
- (3) a failure by the Seller to provide the information it is required to provide under the Network Connection Contract within the timeframe required under that agreement; or
- (4) any failure by the Seller to perform its obligations under this Agreement or any Project Agreement,

the Buyer will be allowed an extension of the time to complete Provisional Completion of the Network Operator's Assets equal to

6.4. The Buyer is not liable to pay the Seller, and the Seller must not claim Delay Costs as a result of a delay in the completion of the Network Operator's Assets.

6.7 ARTICLE 7 The Facility

7.1. The Seller should design, procure, construct, erect, install, test and commission the Facility:

1. in all material respects in accordance with the design and equipment parameters set out in the Design and Technical Specifications and so that it: (a) will be fit for the purposes identified in the Design and Technical Specifications; and (b) will have the minimum design life specified in the Design and Technical Specifications; and

2. otherwise in accordance with:

- (A) Good Utility Practice;
- (B) the Network Connection Contract;
- (C) the Generation License;
- (D) the requirements of all relevant Laws;
- (E) the requirements of any industry codes with which the Seller is legally obliged to comply, including any Grid Code; and
- (F) the terms of all relevant Authorisations.

7.2. Without limiting the Seller's obligations under clause 9.5 (liquidated damages), the Seller must use its Reasonable Endeavours to achieve the timely completion of the Facility in accordance with the Implementation Schedule.

(c) For the purposes of this article, all references to 'the Seller' are deemed to include the Contractor/Subcontractor.

7.3. The Seller should, in designing and constructing the Facility:

- (a) keep the Site tidy and free of refuse;
- (b) keep the Site and the Facility secure and safe and free from all unauthorised access;
- (c) prevent nuisance, noise, dust, air and other pollution, odour, vibration and any disturbance to the areas adjacent to the Site from exceeding any levels stipulated in any Law or Authorisation, and otherwise comply in all respects with all relevant Laws relating to environmental standards and pollution control;
- (d) not (except to the extent required to design and construct the Facility in accordance with this Agreement) cause any damage to:
 - (1) the Site or any adjacent sites; and
 - (2) any other services, fittings, fixtures or other items on the Site;
- (e) take all measures necessary to protect and ensure the safety of people and property in accordance with Good Utility Practice;

7.4. Nothing in this paragraph affects the Seller's obligation to achieve the Commercial Operation Date Criteria by the Scheduled Commercial Operation Date.

7.5. The Implementation Schedule is to be prepared and communicated using a commercially available project scheduling software as agreed between the Parties, acting reasonably.

The Seller must provide to the Buyer a copy of the Implementation Schedule and any updated Implementation Schedule.

The Implementation Schedule should:

[.....]

Any updated Implementation Schedule must not adjust the Scheduled Commercial Operation Date.

7.6. The Seller agrees that, whether or not there is a proposed or likely departure from the Implementation Schedule, an updated Implementation Schedule will be provided to the Buyer within

..... Business Days of the end of each Month occurring before the Commercial Operation Date (or at such other time as reasonably requested by the Buyer).

7.5. The Buyer may review any updated Implementation Schedule and may provide comment to the Seller arising from that review. The Seller must consult with the Buyer in good faith on any comment made or matter identified by the Buyer as a result of the Buyer's review of the updated Implementation Schedule (which may result in the Seller amending the updated Implementation Schedule to address any comment or matter).

7.6. The Seller acknowledges and agrees that:

- (1) the Buyer does not assume or owe any duty of care to the Seller to review or comment on any Implementation Schedule;
- (2) any review or comment on any Implementation Schedule by the Buyer (or failure by the Buyer to provide review or comment) will not:
 - (A) limit, or relieve the Seller of, any obligation or liability under this Agreement;
 - (B) evidence or constitute the granting of an extension of time or an instruction by the Buyer to accelerate, re-sequence, disrupt, prolong or vary any or all of the design and construction of the Facility;
 - (C) limit any right of the Buyer under this Agreement;
 - (D) constitute acceptance by the Buyer of the performance of the Seller's obligations under this Agreement;
 - (E) be considered as a representation or an acknowledgment by the Buyer that the relevant Implementation Schedule complies with this Agreement; or
 - (F) give rise to any Claim on the part of the Seller;
- (3) the Seller has not in any way relied (and will not rely) upon any review or comment on any Implementation Schedule by the Buyer (or any failure by the Buyer to provide review or comment); and
- (4) the Buyer is not liable for, or in connection with, any Claim by the Seller (and the Seller is not entitled to make, and is absolutely barred from making, any Claim) against the Buyer arising out of or in connection with:
 - (A) any Implementation Schedule; or
 - (B) any review or comment on, any Implementation Schedule by the Buyer (or any failure by the Buyer to provide review or comment).

7.7. At the end of every second Month during the design and construction of the Facility, the Seller must provide the Buyer with a report in respect of the status of the design and construction of the Facility which sets out:

- (1) the design, construction and testing and commissioning activities undertaken by the Seller and its Subcontractors including any Tests during the preceding period;

(2) the Seller's progress against the Implementation Schedule (with reference to each date and task specified in that document) as at the date of the report and any estimated delays in the completion of any of the key milestones by the respective milestone dates and the Seller's proposed measures to eliminate or minimise those estimated delays; and

(3) any other information in respect of the design and construction of the Facility reasonably requested by the Buyer from time to time, regardless of whether or not such information has already been provided to the Buyer by way of the Implementation Schedule.

7.8. The Buyer may, at its own cost and risk, inspect any part of the Facility at all times prior to the Commercial Operation Date provided that the Seller is given reasonable prior Notice of such inspection.

7.9. In inspecting any part of the Facility, the Buyer must:

(1) comply with the Seller's occupational health and safety requirements applicable to the Site, as are advised to the Buyer in advance in writing; and

(2) not unduly interfere with the Seller's operations at the Site or the Facility.

7.10. Personnel

[Provisions regarding personnel may be inserted]

6.8 ARTICLE 8 Testing and Commissioning of the Facility

8.1. Subject to clause 8.5. below, the Seller is solely responsible for the provision or procurement, at its sole cost, of all electricity, water and other inputs required for the Testing, commissioning and start-up of the Facility prior to the Commercial Operation Date in accordance with this Agreement.

The Buyer must not, during any Tests of the Facility by the Seller prior to the Commercial Operation Date, energise or back-feed high voltage power (close breaker to the Transmission System) into the Facility without the prior written approval of the Seller (which approval must not be unreasonably withheld).

8.2. The Seller must not initiate the synchronisation of any Generating Units of the Facility with the Transmission System without the prior written approval of the Network Operator under the Network Connection Contract.

8.3. If the approval of the Network Operator referred to under clause 8.2(a) is:

(1) unreasonably withheld or delayed; or

(2) reasonably withheld or delayed but the aggregate length of all delays (other than delays which occur in response to a breach by the Seller of the Network Connection Contract or a failure by the Seller to comply with any requirements for synchronisation provided for under the Network Connection Contract or at Law) exceeds 72 hours, and the failure or delay in granting approval causes a delay in the occurrence of the Commercial Operation Date, the Seller will be entitled to an extension of time to the Scheduled Commercial Operation Date in accordance with clause 9.2 and payment of Delay Costs in accordance with clause 9.4.

8.4. By no later than:

- (1) Days prior to any proposed synchronisation date; and
- (2) thereafter, Business Days prior to the actual synchronisation date, the Seller must Notify the Buyer, by Notice, of the initial synchronisation of any Generating Units of the Facility with the Transmission System.

8.5, The Buyer must, at the Seller's cost, supply such quantities of back feed electricity to the Facility as it is necessary for the initial energisation of the Facility and any of its individual Generating Units, and at such times as the Seller may Notify to the Buyer to enable the Seller to achieve the Commercial Operation Date on or before the Scheduled Commercial Operation Date in accordance with the Implementation Schedule.

8.6. The Seller is solely responsible for the development and implementation of the test procedures, testing program (including the Tests to be passed by the Facility) and estimated loading requirements during the construction, start-up and commissioning of the Facility and must provide reasonable prior Notice to the Buyer of all Testing of the Facility.

8.7. The Buyer must on request provide the Seller with its forecast of the demand supply position of the Transmission System from time to time. The test procedures and testing program developed by the Seller must take into account the Buyer's forecast of the demand supply position of the Transmission System as provided to it under this clause.

8.8. Any member of the Operating Committee is entitled to be present at any Testing of the Facility.

8.9. The Seller must provide the Buyer with a copy of its final program for testing the Facility, including the expected duration of its start-up testing program, not less than Business Days prior to the commencement of such test program. The Seller must Notify the Buyer, at least Business Days in advance, of the required load in connection with any Test and the nature and duration of the required load.

8.10. In relation to any Test that is required to be rescheduled by the Seller, the Seller must Notify the Buyer at least 48 hours in advance of the commencement of the rescheduled Test.

8.11. On each Day beginning with the Day on which Testing commences, the Seller must give final confirmation of the Tests to be conducted on the following Day or Days (if such Test will continue for more than one Day).

8.12. If the Buyer is unable to accommodate a proposed schedule for Testing it must give Notice to the Seller within 48 hours of its receipt of the final schedule for Testing of its requirements regarding deferral or any Tests (including commissioning tests) for the Facility and the Parties will agree on a date for any deferred Test or program. Any failure to agree may be referred for determination in accordance with article 24 of this Agreement.

8.13. During the Testing of the Facility or any of its individual Generating Units provided for in Annex 3, and in accordance with the test procedures and testing program developed and implemented by the Seller, the Buyer must accept and take delivery of the Electricity from the Facility to allow the Seller to perform the relevant Tests of the Facility or individual Generating Units, subject always to the Network Operator's operational procedures for the Transmission System and the terms of the Network Connection Contract.

8.14. In case:

- (1) a duly scheduled Test fails due solely to conditions in the Transmission System (including the Network Operator's Assets); or
- (2) the Buyer fails to receive and take delivery of Electricity from the Facility in accordance with Annex 3 and the testing procedures and testing program developed and implemented by the Seller, and such failure or delay causes a delay in the occurrence of the Commercial Operation Date, then the Seller will be entitled to an extension of time to the Scheduled Commercial Operation Date in accordance with clause 9.2 and payment of Delay Costs in accordance with clause 9.4, subject in each case, to the Operating Committee's certification as to the cause of any relevant Test failure and the readiness of the Facility to undertake any Test at the original proposed time.

8.15. Once the Seller considers that the Facility:

- (1) has passed the Facility Performance Test in accordance with the requirements of Annex 3; and
- (2) has been designed and constructed in accordance with the Design and Technical Specifications, it will give Notice to the Operating Committee and provide the Operating Committee with:
 - (a) a copy of the Test Verification Certificate; and
 - (b) a report which confirms in reasonable detail the basis for the findings made under the Test Verification Certificate.

8.16. The Operating Committee will determine whether or not the Test Verification Certificate should be accepted, including whether:

- (1) the Facility has passed the Facility Performance Test (in accordance with the requirements of Annex 3); and
- (2) the Operating Committee agrees with the Testing Expert that the Facility has been designed and constructed in accordance with the Design and Technical Specifications and will Notify the Seller of its conclusion.

8.17. If the Operating Committee determines that the Test Verification Certificate should not be accepted, the Operating Committee must advise the Seller in writing of the reason or reasons and the Seller must remedy those reasons before the Test Verification Certificate and supporting report can be reissued by the Seller.

Once the Operating Committee determines that the Test Verification Certificate should be accepted, and the other Commercial Operation Date Criteria have otherwise been achieved, the Operating Committee must sign and issue to the Seller a certificate confirming this determination. The Day following the date of the certificate issued by the Operating Committee is the '*Commercial Operation Date*'.

8.18. The Seller must, no later than..... Months prior to the commencement of Testing and commissioning of the Facility, provide the Operating Committee with the names of 3 testing institutions that:

- i. have suitable international experienced in field of constructing and operating electrical facilities similar to the Facility; and
- ii. are willing and able to perform the services and functions to be performed by the '*Testing Expert*' set out in Annex 3, including the necessary services to certify that:

- (a) the Tests have been successfully passed in accordance with the requirements of Annex 3; and
- (b) the Facility has been designed and constructed in accordance with the Design and Technical Specifications.

8.19. The nominated expert that is approved by the Operating Committee will be the 'Testing Expert'. The Testing Expert must be engaged by the Seller to perform the services and functions to be performed by the 'Testing Expert' referred to herein above. The Seller will be responsible for paying the Testing Expert's costs and expenses associated with the performance of the Testing Expert's duties referred to in this Agreement, including the provision of the Test Verification Certificate.

8.20. From the Commercial Operation Date and throughout the Supply Term, the Seller must retain at the Site and must provide to the Buyer:

- (a) for all items of equipment incorporated into the Facility, copies of the specifications and operation manuals for such equipment;

- (b) copies of all Test results for Tests performed in accordance with this Agreement and all items of equipment incorporated into the Facility;
- (c) as-built drawings for the Facility after the Commercial Operation Date;
- (d) all drawings approved by Government Agencies; and
- (e) all detailed technical documents related to the design, engineering and construction of the Facility, to the extent that such items are normally retained in accordance with Good Utility Practice or are otherwise required to be retained under this Agreement for the purposes of the Network Operator commissioning the Network Operator's Assets under the Network Connection Contract.

6.9 ARTICLE 9 Extensions and Delays

9.1. If the Seller becomes aware that it will be delayed or disrupted in achieving the Commercial Operation Date, the Seller must, as soon as reasonably practicable and in any event by no later than..... Business Days after becoming aware, give the Buyer Notice stating:

- (a) the details of the delay or disruption and the anticipated date of completion of Commercial Operation Date; and
- (b) the steps, if any, the Seller proposes to take to eliminate or minimise the delay or disruption.

9.2. If there is: **[indicatively]**

- (a) *a delay or disruption in completing*
- (b) *a change to the Network Operator's Assets in accordance with clause 15.1;*
- (c) *any withholding or delay of approval by the Network Operator of the synchronisation of any Generating Units of the Facility with the Transmission System, and article provides that the Seller will be entitled to an extension of time*
- (d) *a failure by the Buyer to receive and take delivery of Electricity from the Facility in accordance with article 8 or any Test of the Facility is delayed under article 8, and, in both instances, article provides that the Seller will be entitled to an extension of time in accordance with this clause;*
- (f) *a failure by the Operating Committee to reach a decision within the timeframe required under article (to the extent that it is not caused or contributed to by the Seller or any Seller representative on the Operating Committee);*
- (g) *a breach by the Buyer of this Agreement (to the extent that it is not caused or contributed to by the Seller);*
- (h) *a Change in Law;*
- (j) *Force Majeure Event,*

which occurs:

on or before the Scheduled Commercial Operation Date that will have the effect of delaying the occurrence of the Commercial Operation Date until after the Scheduled Commercial Operation Date;
or

or

after the Scheduled Commercial Operation Date that will have the effect of delaying the occurrence of the Commercial Operation Date, then,

subject to clause below, the Buyer should, acting reasonably, adjust the Scheduled Commercial Operation Date by a reasonable period of time to take into account the delay on the occurrence of the Commercial Operation Date by giving Notice of that adjustment to the Seller.

9.3. The Buyer should consider the occurrence set out in paragraph above in determining the adjustment (if any) to the Scheduled Commercial Operation Date to be granted to the Seller under clause 9.2.:

- (a) the delay suffered by the Seller is due to an activity on the critical path contained and shown in the then current Implementation Schedule;
- (b) if the Seller fails to give Notice in respect of the delay in accordance with the timeframe required by article 9.1., the adjustment to the Scheduled Commercial Operation Date will be reduced for each Day following the expiry of such timeframe until a Notice that complies with clause 9.1 (other than in respect of timing only) is provided to the Buyer;
- (c) the Scheduled Commercial Operation Date will not be extended to the extent that the delay would have nevertheless been experienced had the event in clause 9.2(a) to 9.2(i) not occurred; and
- (d) the Seller has made all reasonable efforts to prevent or reduce to a minimum, and mitigate the effect of, any delay.

9.4. (a) Subject to article 6 and this clause, where the Buyer grants the Seller an extension of time to the Scheduled Commercial Operation Date under article 9.2 for any of the delay events set out therein, the Seller may claim from the Buyer, and the Buyer will be liable to pay to the Seller, delay damages at a rate of the Delay Amount for each Day of the extension (Delay Costs).

(b) The Buyer is not liable to pay the Seller, and the Seller must not Claim, Delay Costs for the first Days (cumulative) of extension granted to the Seller under article 9.2. for all delay events set out in article 9. 2..

(c) The Buyer must pay the Seller the Delay Costs within..... Business Days following the receipt of the Seller's claim under article 9.4. (a) which may be made progressively each Month prior to the occurrence of the Commercial Operation Date; and *in [currency]*.

[Liquidated damages may be provided]

9.5. *Subject to this article 9.5., if the Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date, the Seller must pay the Buyer the LD Amount for each Day until the earlier of:*

- (1) *the occurrence of the Commercial Operation Date; or*

(2) *the date this Agreement is terminated by either Party in accordance with this Agreement.*

(b) *The Seller is not liable to pay the Buyer, and the Buyer must not claim, the LD*

Amount for the first Days (cumulative) that the Seller fails to achieve the Commercial Operation Date by the Scheduled Commercial Operation Date.

(c) *The Seller's liability to pay the LD Amount under this clause is limited to[LD Cap in US\$/Euro].*

9.6 [Payment of LD Amounts]

6.10 ARTICLE 10 Operation and Maintenance of Facility

10.1. The Seller

(a) must, at its own cost, operate, maintain and repair the Facility to ensure it meets the *operating capabilities* of Annex 13 throughout the Supply Term. (b) Without limiting clause 10.1(a), the Seller is solely responsible for the operation, maintenance and repair of the Facility until the end of the Supply Term in a manner consistent with:

- (1) Good Utility Practice;
- (2) the requirements of any third-party utility providers to the Facility;
- (3) the Network Connection Contract;
- (4) the Generation License;
- (5) the terms of all relevant Authorisations;
- (6) the requirements of all relevant Laws;
- (7) the requirements of all relevant codes with which the Seller is legally obliged to comply, including any Grid Code; and
- (8) any other requirements of this Agreement.

10.2. The Seller must, at its own cost, procure all inputs and resources (including all electricity and water) required for the operation, maintenance and repair of the Facility in accordance with this Agreement.

10.3. The Seller must keep accurate records of any accident or other occurrence at **the** Facility that results in injury to persons or damage to property. The Seller must provide the Buyer with reasonable access to these records on request by the Buyer.

10.4. In the event of any damage to the Facility, the Seller must promptly rectify such damage and restore the Facility to the condition it would have been if such damage had not occurred.

10.5. For the purposes of this clauses 10.1.-10.4., all references to the Seller are deemed to include the Subcontractor (where applicable). The Seller must operate, maintain and repair the Facility in accordance with all Laws and Authorisations relating to pollution control and environmental standards applicable in Republic of [country]

10.6. The Seller must maintain (and the Buyer must procure that the Network Operator, as applicable, maintains) operating communications between the Facility, the Transmission System and the Dispatch Centre in accordance with the Operating Procedures. The Seller must keep *operation records for the Facility in accordance with the provisions in the Network Connection Contract*.

10.7. The Seller must not modify the capacity of the Facility from the characteristics described in this Agreement or the Generation License without the Buyer's prior written consent.

10.8. The Seller must operate, maintain and repair the Facility in accordance with all Laws and Authorisations relating to pollution control and environmental standards applicable in the Republic of [country].

6.11 ARTICLE 11 Delivery and Acceptance of Electricity

11.1. The Buyer acknowledges and agrees that:

- (1) the Buyer must accept and take delivery at the Delivery Point of all Electricity generated and delivered from the Facility during the Supply Term up to the Installed Capacity, except when relieved of the obligation to do so by the express provisions of this Agreement;
- (2) for each Deemed Delivery Event that results in Deemed Delivered Electricity of Annex 9, the Seller will, subject to clause 17.2. force majeure response of parties be entitled to be paid for the associated Deemed Delivered Electricity, in accordance with the provisions set out in Annex 9; and
- (3) the Seller does not operate or control the Transmission System, and that supply of Electricity through the Transmission System beyond the Delivery Point and the quality, frequency or continuity of that Electricity through the Transmission System after the Delivery Point is outside of the Seller's control.

Nothing in this clause limits the Seller's obligations under clause 11.5.

11.2. The Seller must deliver all of the Electricity generated by the Facility to the Buyer at the Delivery Point, other than Electricity consumed at the Site by the Seller for the purposes of operating and maintaining the Facility.

For clarity, the Seller is not entitled to deliver any Electricity generated by the Facility during the Agreement Term to an off-taker of Electricity other than the Buyer.

11.3. During the period prior to the Commercial Operation Date but not earlier than the date on which the Facility and the Network Operator's Assets are installed and tested and the Seller has provided evidence to the satisfaction of the Buyer (acting reasonably) that a Generating Unit (or Generating Units) are ready for reliable operation, the Buyer must take delivery of and purchase Electricity delivered to the Delivery Point (such Electricity being Initial Delivered Electricity).

Initial Delivered Electricity will be purchased at the price determined in accordance with Annex 6.

11.4. The entitlement to and risk in all Electricity delivered by the Seller, and accepted by the Buyer, passes from the Seller to the Buyer at the Delivery Point.

11.5. The Seller must use Reasonable Endeavours to ensure that at all times the Electricity generated by the Facility at the Delivery Point complies with standards as set out in the Network Connection Contract.

6.12 ARTICLE 12 Site Meters

The following provisions may be inserted:

- Responsibility for site meters*
- Site Meter testing and calibration*
- Information provided by the Seller*
- Meter data and measurement*
- Inaccuracies in Site Meters*
- *Repair, replacement or recalibration of Site Meters*
- Access*

6.13 ARTICLE 13 Payment and Invoicing

To be inserted

6.14 ARTICLE 14 Taxes

References to national taxation regime.

6.15 ARTICLE 15 Changes to Facility and Transmission System

1. Changes requested by Network Operator to Facility or Transmission System

[This article should provide for the procedure and the consequences in case the Network Operator changes the technical requirements applicable to the Connection Facilities or the Interfaces (other than where such change comprises or is required due to a Change in Law), or proposes any expansion, upgrade or modification of the Transmission System.]

2. Changes requested by Seller to Facility

[(a) If, at any time, the Seller proposes to make any material change to the Facility, then it must give Notice to the Buyer of the proposed change to the Facility.

(b) Following receipt of a Notice under clause 15.2(a), the Parties must meet and begin negotiating, with a view to reaching agreement on the manner in which the change to the Facility is to be implemented by the Seller so that the impact on the Buyer's operations is minimised and whether the change is otherwise acceptable to the Buyer.

(c) Nothing in this para 15.2 entitles the Seller to make any change to the Facility which has the effect that the Facility will not in all respects comply with the design and equipment parameters set out in the Design and Technical Specifications or which would increase the Installed Capacity].

6.16 ARTICLE 16 Changes if Law

16.1. If either Party considers that a Change in Law has occurred which will have a Change Effect³⁵, it must, by the date that is the earlier of Months after the occurrence of that Change in Law deliver to the other Party a Notice identifying:

- (1) the Change in Law and
- (2) its estimate of the likely Change Effect resulting from the Change in Law.

16.2. In the case of a Change in Law that is likely to have a beneficial Change Effect on the Seller, the Seller must provide all information reasonably requested by the Buyer to enable to Buyer to calculate the likely Change Effect for the purpose of giving a Notice under para 16.1. above.

16.3. The Seller must, in accordance with Good Utility Practice, use all Reasonable Endeavours to:

³⁵ The change effect could be connected e.g. with Seller's revenue after tax from the operation of Facility arising as a direct result of a Change in Law or Force Majeure Event (or both) after any reduction in any cost or adverse revenue effects after the Seller's mitigation in accordance with article 16.3, or such reduction as would have been achieved had the Seller complied with its obligations under clause 16.3, and after taking into account: any amounts payable to or recoverable by the Seller, any compensation paid to the Seller by any Government Agency and the proceeds of any insurance policy.

- (1) prevent, minimise and mitigate the adverse impact of any Change in Law identified under para 16.1. above on its ability to perform the Seller's Obligations or the Seller's obligations under any other Principal Project Agreement (or any combination of them); and
- (2) to the extent not inconsistent with its obligations under clause 16.3. (1), use all Reasonable Endeavours to minimise any adverse Change Effect from that Change in Law.

16.4. If after the Seller's compliance with clause 16.3., a Change in Law identified under clause 16.1. results in a Change Effect that is adverse to the Seller, that in combination with all previous adverse Change Effects for which the Seller has not already been compensated under clause 16.9. will exceed an amount which is equal to US\$/Euro..... per MWac of Installed Capacity (excluding the amount of any adverse Change Effect which has previously been taken into account under clause 16.2), the Seller may, as soon as practicable following the Seller's compliance with clause 16.3. in respect of the most recent Change Effect which resulted in the amount prescribed by this clause being exceeded, deliver the Buyer a further Notice identifying the Change in Law and the Change Effect, accompanied by full details and supporting evidence.

16.5. If a Change in Law identified under clause 16.1. results in a Change Effect, that in combination with all previous beneficial Change Effects for which the Buyer has not already been compensated for under clause 16.6. will exceed an amount which is equal to US\$/Euro..... per MWac of Installed Capacity (excluding the amount of any beneficial Change Effect which has previously been taken into account under clause 16.6.), the Buyer may, as soon as practicable following the giving by the Buyer of its Notice under clause 16.1. in respect of the most recent Change Effect which resulted in the amount prescribed by this clause being exceeded, deliver the Seller a further Notice identifying the Change in Law and the Change Effect, accompanied by full details and supporting evidence.

16.6. Within Business Days after the receipt of a Notice under clause 16.4. or 16.5, the Parties should start negotiating in good faith, with a view to reaching agreement on what changes should be made to the terms of this Agreement so as to ensure as far as possible that the Seller is in the same economic position under this Agreement as if the Change in Law had not occurred.

16.7. If the Parties fail to agree upon all those changes within Business Days after the date of receipt of the Notice delivered under clause 16.4. or 16.5, then the provisions of article 24 below will apply to the Dispute.

16.8. Following any failure by the Parties to agree changes to this Agreement under clause 16.9. or following any determination that imposes a change to the terms of this Agreement on the Parties, the Buyer may elect by giving Notice within a furtherBusiness Days to terminate this Agreement without the need for any other legal or judicial procedure.

If the Buyer elects to terminate this Agreement, the *Buyer will be obliged to[purchase the Facility in accordance with the relevant provisions of article 19 -IF THIS AGREED].*

6.17 ARTICLE 17 Force Majeure

17.1. For the purposes of this Agreement, 'Force Majeure Event' is any event which is not within the reasonable control, directly or indirectly, of the Party affected (Affected Party). "Force Majeure" means any event beyond the reasonable control of the Party claiming to be affected by it and not caused or contributed to by such Party and shall include, but shall not be limited to, acts of God, epidemics, earthquakes, fires, floods, explosions, strikes, lockouts, wars and state of war, revolutions, civil commotions, insurrections, mutinies and acts of the State or of any foreign government. Force Majeure shall not excuse the failure to pay any sum when due hereunder and a lack of funds shall not constitute Force Majeure.

17.2. An Affected Party should give to the other Party (Non-Affected Party) Notice under clause 17.3 below, and advise the Non-Affected Party in writing (Force Majeure Notice) of:

- (1) the date of commencement of the Force Majeure Event;
- (2) the nature and expected duration of the Force Majeure Event;
- (3) the anticipated effect of the Force Majeure Event on the performance by the Affected Party of its obligations under this Agreement; and
- (4) the actions to be taken to comply with requirements of this article.

17.3. The Affected Party must send the Force Majeure Notice no later than Business Days after the date on which the Affected Party first had knowledge of the Force Majeure Event. If the Affected Party does not deliver the Force Majeure Notice in accordance with this clause, the Affected Party is not entitled to the benefits of this article.

(c) The Affected Party must:

(1) make all reasonable efforts to prevent, minimise and mitigate the effect of any delay occasioned by any Force Majeure Event and to have recourse to alternate sources of services, equipment and materials and construction equipment; and

(2) use its best efforts to ensure resumption of normal performance of this Agreement as promptly as possible (including, in the case of the Seller, by repairing or reinstating the Facility in accordance with its obligations under this Agreement) and otherwise perform its obligations in accordance with this Agreement.

(d) Within Business Days following the cessation of any Force Majeure Event, the Affected Party must submit to the Non-Affected Party reasonable proof of the nature of the delay and its effect upon the performance by the Affected Party of its obligations under this Agreement.

17.4. Subject to the provisions of clause 17.2 above, the Affected Party is excused from performance and will not be construed to be in Default for so long as, and to the extent that, the failure to perform the obligation is due to a Force Majeure Event. The Affected Party must, however, continue to perform all of its obligations under this Agreement which are not affected by a Force Majeure Event in accordance with the terms of this Agreement.

6.18 ARTICLE 18 Default

[The occasions where the Seller and/or the Buyer is in Default should be included in this article as well as the relevant procedure. For example:]

18.1. It is a Default by the Seller if:

- (a) *the Commercial Operation Date of the Facility does not occur within Days following the Scheduled Commercial Operation Date;*
- (b) *the Seller Abandons the Project;*
- (c) *the Seller breaches any of the material requirements relating to the Letter of Guarantee;*
- (d) *the Seller breaches any of the material insurance requirements under article 21.*
- (e) *the Seller fails to make any payment or part payment owed by the Seller to the Buyer under this Agreement by the due date for payment;*
- (f) *the Seller commits any other breach of a material term of this Agreement that is not set out in another sub-paragraph of this clause;*
- (g) *any of the Principal Project Agreements (other than this Agreement) are terminated at any time (except as a result of a breach by a Principal Party or termination due to a 'Force Majeure Event' (as that term is defined in the relevant Principal Project Agreement));*
- (h) *the Seller suffers an Insolvency Event; or*
- (i) *the Seller breaches clause 1.4. of this Agreement.*

18.2. It is a Default by the Buyer if:

- (a) *the Buyer fails to make any payment or part payment owed by the Buyer to the Seller under this Agreement that remains unpaid:*
 - (1) *... Business Days after the due date for payment; and*
 - (2) *.....Business Days after.....in respect of that amount under the PPA Direct Agreement;*
- (b) *the Buyer breaches any material term of this Agreement, other than a breach:*
 - (1) *in relation to payment;*
 - (2) *for which the Seller is entitled to an extension of time under article 9 or the payment of Delay Costs under article 9; or*
 - (3) *which results in Deemed Delivered Electricity;*
- (c) *any of the Principal Project Agreements (other than this Agreement) are terminated at any time due to a breach by a party;*
- (d) *the Buyer suffers an Insolvency Event*;
- (e) *Provisional Completion of the Network Operator's Assets does not occur by the date which is Days after the.....;*

(f) a Change in Law occurs which prevents the performance of the Buyer's material obligations under this Agreement or the State's material obligations under the PPA Direct Agreement (or both), or which makes the performance of any such obligations illegal.

18.3. Upon the occurrence of a Default by the Seller or the Buyer, the following procedures apply:

(a) the Party not in Default (Non-Defaulting Party) may give a default Notice (Default Notice) to the other Party (Defaulting Party) in accordance with the notice provisions of article 27, specifying:

(1) in reasonable detail, the Default giving rise to the Default Notice;

(2) except in the case of a Default under 18....., the period within which the Defaulting Party must remedy the Default (Default Cure Period), being:

(A) where the Default relates to a failure of payment but is not an Insolvency Event, a period ofBusiness Days after receipt of the Default Notice; or

(B) where the Default does not relate to a failure of payment, a period of Business Days after receipt of the Default Notice; and

(3) where the Default is a Default under clauses 18....., a period of:

(A) in respect of a Default under clauses 18..... Business Days during which to remedy or overcome the effects of the relevant Default to the Nondefault Party's satisfaction; and

(B) in respect of a Default under clause 18., Business Days during which to remedy or overcome the effects of the relevant Default to the Non-Defaulting Party's satisfaction, (Default Mitigation Period); and

(4) where the Default is a Default under clause 18....., that an immediate termination event has occurred, and the Non-Defaulting Party has elected to terminate this Agreement in accordance with article 19; and

(b) the Parties must consult with each other as to what steps must be taken with a view to mitigating the consequences of, and curing (if applicable), the Default.

6.19 ARTICLE 19 Termination

TERMINATION

19.1. If a Default was committed by or occurs in respect of the Seller and that Default remains unremedied at....., or is an immediate termination event under clause 18.1 (g) (as the case may be), the Buyer may:

(1) terminate this Agreement by giving a Notice (Termination Notice) of not less thanBusiness Days to the Seller (without the need for any other legal or judicial procedure);

(2) [exercise its right to purchase the Facility under article 20]; and

(3) have recourse to the Letter of Guarantee to the extent necessary to compensate the Buyer for any reasonable costs, losses, charges or expenses, including legal costs on an indemnity basis, incurred, or likely to be incurred, by the Buyer in connection with the termination of this Agreement.

19.2. To the extent not otherwise recovered by the Buyer by recourse to the Letter of Guarantee under 19.1. and without limiting Annex 12, the Seller must, on written demand, reimburse the Buyer for any reasonable costs, Losses, charges or expenses, including legal costs on an indemnity basis, incurred by the Buyer in connection with the termination of this Agreement in accordance with clause 19.1.

19.3. Subject to the relevant provisions of the PPA Direct Agreement, if a Default was committed by or in respect of the Buyer and that Default remains unremedied at the end of the (as the case may be):

(1) the Seller may:

(A) terminate this Agreement by giving a Termination Notice of not less than Business Days to the Buyer without the need for any other legal or judicial procedure; and

(B) *[exercise its right to require the Buyer to purchase the Facility under article 20]* and

(2) the Buyer must, upon written demand, reimburse the Seller for the Termination Costs in accordance with Annex 10.

19.4. *[Termination upon prolonged Force Majeure Event]*

If a Force Majeure Event prevents:

(1) the Buyer from wholly or materially performing its obligations (including the acceptance of Electricity at the Delivery Point) or exercising its rights under this Agreement on a substantially continuous basis for Days or more; or

(2) the Seller from wholly or materially performing its obligations under this Agreement, or generating and delivering Electricity to the Delivery Point, on a substantially continuous basis forDays or more,

then either Party (provided that it is, at the relevant time, in compliance with its obligations under this Agreement other than (if applicable) those excused by the Force Majeure Event) may terminate this Agreement by Notice to the other Party and without the need for any other legal or judicial procedure.

If a Party elects to terminate this Agreement under this clause, it must give a Termination Notice to the other Party specifying the date on which it proposes to terminate this Agreement, which date must not be less than Business Days after the date of the Termination Notice.

If:

(1) *the Buyer terminates this Agreement under clause 19.4, the Seller will have the right to require the Buyer to purchase the Facility in accordance with clause 19.6; or*

(2) *the Seller terminates this Agreement under clause 19.4., the Buyer will have the right, but not the obligation, to purchase the Facility in accordance with the relevant provisions of clause 19.6. by giving Notice to the Seller within ... Business Days of such termination.*

(d) *This Agreement automatically terminates if any Principal Project Agreement (other than this Agreement) is terminated due to a 'Force Majeure Event'.*

19.5. *[Termination upon expiration of Supply Term should be provided]*

Unless terminated earlier in accordance with the provisions of this Agreement, this Agreement terminates on the last Business Day of the Supply Term. If this Agreement terminates under this clause, the Seller must comply with the relevant provisions of the Usufruct Agreement in decommissioning and removing the Facility from the Site.

19.6. *[The consequences of the termination should be provided]*

(a) In the event of termination of this Agreement by the Buyer due to a Default by the Seller under clause 19.1, the Buyer will have the right, but not the obligation, to purchase the Facility by paying to the Seller

(b) In the event of termination of this Agreement by the Seller due to a Default by the Buyer under clause 19.3., the Seller will have the right, but not the obligation, to require the Buyer or its nominee to purchase the Facility:

(1) if the Termination Notice delivered by the Seller to the Buyer before the Commercial Operation Date, by paying to the Seller a price equal toin Annex 10; or

(2) if the Termination Notice delivered by the Seller to the Buyer on or after the Commercial Operation Date, by paying to the Seller a price equal toin Annex 10.

(c) In the event of termination of this Agreement due to the occurrence of a prolonged Force Majeure Event under clause 19.4., the following will apply:

(1) if the Seller terminates this Agreement under clause 19.4. for prolonged Force Majeure Event, then the Buyer will have the right, but not the obligation, to purchase the Facility:

(A) if the Termination Notice is delivered by the Seller to the Buyer before the Commercial Operation Date, by paying the Seller a price equalin Annex 10.

(B) if the Termination Notice is delivered by the Seller to the Buyer on or after the Commercial Operation Date, by paying the Seller a price equal to in Annex 10; or

(2) if the Buyer terminates this Agreement under clause 19.4. for prolonged Force Majeure Event, the Seller will have the right, but not the obligation, to require the Buyer or its nominee to purchase the Facility:

(A) if the Termination Notice is delivered by the Buyer to the Seller before the Commercial Operation Date, by paying to the Seller a price equal to..... in Annex 10; or

(B) if the Termination Notice is delivered by the Buyer to the Seller on or after the Commercial Operation Date, by paying to the Seller a price equal to Annex 10

(e) If the Buyer terminates this Agreement under article 15 following a failure to agree amendments to this Agreement for proposed changes to the Connection Facilities, Interfaces or Transmission System by the Network Operator, or under article 16 as a result of a Change in Law then the Buyer or its nominee must purchase the Facility:

(1) if the Termination Notice is delivered by the Buyer to the Seller before the Commercial Operation Date, by paying to the Seller a price equal to in Annex 10; or

(2) if the Termination Notice is delivered by the Buyer to the Seller on or after the Commercial Operation Date, by paying to the Seller a price equal to in Annex 10.

19.7. From receipt of the Termination Notice until the termination of this Agreement, the Parties must continue to perform their obligations in accordance with this Agreement, except to the extent that they are prevented from doing so by a Force Majeure Event.

19.8. *The payments made under this article are without prejudice to a Party's other rights arising from a breach by the other Party of any covenant or warranty, or under any indemnity, that was not a cause of, or a ground relied upon for, termination of this Agreement.*

Upon the breach by a Party of any covenant or warranty under this Agreement, the Party damaged by any such breach may, in its absolute discretion, in addition to exercising any other remedies provided for in this Agreement, proceed in accordance with article 24 to:

- (1) protect and enforce its rights;*
- (2) recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy); or*
- (3) seek specific performance by the other Party of that other Party's obligations under this Agreement.*

19.9. The expiry or termination of this Agreement does not affect any rights of the Parties against one another in respect of any act, omission, or other event occurring or matter under this Agreement before that expiry or termination.

6.20 ARTICLE 20 Extension of the Supply Term or Sale/Purchase of Facility

20.1 *[The cases of extension should be inserted]*

.....

20.2. *[Purchase of the Facility by Buyer should be provided if that option is agreed upon]*

(a) the Buyer has the right, but not the obligation, to purchase the Facility (or require its *transfer to a nominee of the Buyer*) on expiry of the Supply Term (Purchase Right).

(b) *The Buyer may exercise its Purchase Right by giving the Seller Notice of its intention not less thanMonths before the expiry of the Supply Term.*

(c) *If the Buyer exercises its Purchase Right, the Parties must, unless otherwise agreed between the Parties, promptly appoint a Financial Expert (selected by them jointly) who must be charged with the valuation of the Facility, taking into account, by way of demonstration and not exclusion, the capital investment for the Facility, the book value of the Facility, the duration of the Agreement Term, deemed decommissioning costs and other relevant factors. The cost of the Financial Expert will be shared by the Parties equally.*

(d) *If the Parties agree on the valuation of the Facility, and the Buyer still wishes to purchase the Facility, the Parties must use Reasonable Endeavours to complete any sale and transfer of the Facility by the Seller to the Buyer or its nominee within Business Days after the expiry of the Supply Term (unless otherwise agreed by the Parties) and otherwise in accordance with Annex 10 (as applicable).*

(e) If the Parties do not agree on the valuation of the Facility, or if the Buyer no longer wishes to purchase the Facility, the Buyer is not obliged to proceed with the purchase of the Facility.

20.3. *[Purchase of Facility by third party]*

6.21 ARTICLE 21 Insurance

The following should be provided:

- Insurance requirements
- Endorsements
- Insurance policies
- Application of proceeds
- Insurance claim
- Uninsurable risks

6.22 ARTICLE 22 Intellectual Property

The following should be provided:

- Ownership of Intellectual Property
- New developments (design, construction, testing etc)
- Use of Intellectual Property
- Protection of Intellectual Property

A Party must:

Notify the other Party immediately if it becomes aware of any infringement or potential infringement by a third party of that Party's Intellectual Property; and take all timely steps necessary to ensure that its agents, employees or subcontractors who have access to the Intellectual Property, or any part of it, do not use the Intellectual Property, except in accordance with this article.

6.23 ARTICLE 23 Confidentiality

The following should be provided:

- Authorised disclosure
- Publication of certain information.

6.24 ARTICLE 24 Settlement of Disputes

A. Amicable settlement

24.1 In the event of any difference between the Parties or any inability or failure by the Parties to agree on any matter regarding the interpretation or implementation of any provisions of this Agreement, (a "Dispute"), the Parties shall first attempt to resolve that dispute amicably through negotiations which shall not exceed a period of days after the receipt by one Party of a notice from the other Party of the existence of such a dispute.

B. Independent expert determination

24.2 In the event of failure of the Parties to reach an amicable settlement within the aforesaid period, any matters that according to this Agreement may be referred for determination to an Independent Expert, will be referred to it in accordance with the following:

(a) The Independent Expert shall be selected and nominated by the Parties in accordance with withincalendar days (the "Election Period") from submission of a written notification by a Party (the "Initiating Party") to the other Party (the "Receiving Party") of its intention to refer a Dispute for determination to an Independent Expert. If the Parties are unable to agree a person to act as the Independent Expert, the Parties will ask the *Chairman of the ICC International Centre for Expertise* (or such other body agreed by the Parties) to nominate a person to act the Independent Expert.

(b) Upon an Independent Expert being selected under the foregoing provisions of this Article, either Party shall forthwith notify this Independent Expert of its selection and shall request it to state withincalendar days (the "Acceptance Period") whether or not it is willing and able to accept the appointment. If such Independent Expert shall be either unwilling or unable to accept such appointment or shall not have accepted (the "Disqualified Expert") within the Acceptance Period then the Parties shall select an alternative Independent Expert within calendar days following the end of the Acceptance Period.

(c) For the purposes of determination by the Independent Expert of the Dispute, each Party shall submit to the Independent Expert withincalendar days (the "Submissions Period") following the Independent Expert's acceptance of appointment to both Parties:

- (i) a description of the Dispute;
- (ii) a statement of its position; and
- (iii) any documents supporting and / or justifying its position.

The Independent Expert may, in its absolute discretion, consider any additional information submitted by either Party and / or any other procedural matters not specifically addressed herein.

(d) The terms of reference upon which the Independent Expert shall seek to resolve a Dispute shall be mutually agreed between the Parties. The parameters within which the Independent Expert shall make its determination shall be strictly within the terms of reference, provided that if the Parties fail to agree on the terms of reference, the Independent Expert shall consider the terms of reference proposed by both Parties and decide upon its own (to which the Parties shall be bound). The Independent Expert shall make its determination in writing and notify the Parties of such determination.

(e) Save in the event of fraud or manifest error, the Independent Expert's determination shall be conclusive and binding on the Parties and shall be delivered within days following the end

of the Submissions Period. The decision of the Independent Expert may be referred to arbitration by way of appeal on a point of law, but not on a point of fact. Pending resolution of the dispute by the Independent Expert, there will be no suspension of the Agreement and the Seller shall have the right and the obligation to continue operations under the Agreement.

(f) If the Independent Expert dies or becomes unwilling or incapable of acting, or does not deliver the determination within the time required by this clause then:

(i) the Parties shall promptly select a replacement for the Independent Expert; and

(ii) this Article shall apply to the new Independent Expert as if he were the first Independent Expert appointed.

(g) The language to be used for the purposes of the Independent Expert determination shall be *English*.

(h) The costs of engaging the Independent Expert shall be borne equally by the Buyer and the Seller. Each Party shall bear its own costs in preparing any materials for and making its presentations to, the Independent Expert.

(i) Each Party shall act reasonably and co-operate in good faith to give full effect to all the provisions of this clause and shall do nothing to hinder or prevent the Independent Expert from reaching his determination.

(j) If the Party fail to appoint an Independent Expert (or, as the case may be a replacement Independent Expert) within the time limits prescribed by this Article, then the either Party shall be entitled to refer the relevant dispute, controversy or claim to arbitration in accordance with the following provisions of this Article.

C. Arbitration

24.3 Any dispute, controversy or claim arising out of or relating to this Agreement, or breach, termination or invalidity thereof between the Parties, which:

(a) is not to be referred for determination by an Independent Expert under Article 24.1; or

(b) has been referred to the Independent Expert whose decision is appealed on a point of law; or

(c) if the Parties has not appointed an Independent Expert (or, as the case may be, a replacement Independent Expert) within the time limits prescribed by this Article shall be finally settled by arbitration.

24.4. The place of arbitration shall be

24.5. The number of arbitrators shall be three; they shall be appointed in accordance with the provisions of Law.....

24.6. The arbitration shall be conducted in accordance with the *Rules of Arbitration of the International Chamber of Commerce (as applicable from time to time)*,

24.7. The language to be used in the arbitral proceedings shall beunless the Parties agree otherwise.

24.8. The award rendered shall be final and conclusive. Judgment on the award rendered may be entered in any court for a juridical acceptance and for enforcement, as the case may be.

24.9. During the period of any arbitration, the time limits set for the fulfilment by either Party shall be suspended to the extent that are related to any pending arbitration.

24.10. Pending resolution of the dispute by the panel of arbitrators, there will be no suspension of the Agreement and the Seller shall have the right and the obligation to continue operations under the Agreement.

6.25 ARTICLE 25 Assignment – Change of Control

25.1. The Seller must:

- (1) not assign or transfer its interest under this Agreement other than pursuant to an assignment granted under any [security document] given in favour of a financial institution for the purposes of financing the construction of the Facility; and
- (2) ensure there is no Change in Control in respect of the Seller, (each a Transfer) to any other person (Transferee) without the Buyer's prior written consent (not to be unreasonably withheld).

25.2. The Seller acknowledges and agrees that it would be reasonable for the Buyer to withhold consent to a Transfer under clause 25.1., if:

[.....]

25.3. The Buyer must:

- (1) not assign its interest under this Agreement to any person; and
- (2) ensure there is no Change in Control in respect of the Buyer, without the Seller's prior written consent (not to be unreasonably withheld).

25.4. The Seller acknowledges and agrees that it would be unreasonable for it to withhold its consent to:

[.....]

25.5. The Seller acknowledges and agrees that the Buyer may:

- (1) assign this Agreement to a company owned by, or an Affiliate of, the Republic of, or to a Government Agency, provided that the relevant company, Affiliate or Government Agency is Controlled by the Republic of.....; or
- (2) effect or undertake a Change of Control in respect of the Buyer provided that the Buyer, once the Change of Control is complete, continues to be Controlled by the Republic of, at any time by Notice to the Seller and without Seller's consent.

25.6. *[provisions about the letter of guarantee should be inserted in case of transfer by the Seller or the Buyer].*

6.26 ARTICLE 26 Contractors, Sub-Contractors, Personnel

26.1. Subject to the following provisions of this Article, the Seller shall be entitled to employ contractors and the latter shall be entitled to employ sub-contractors for the performance of this Agreement. The Seller is obliged to submit to the Buyer a copy of any such contracts entered into with contractors (including with Affiliate Enterprises).

26.2. The Buyer shall obtain the Buyer's prior written consent before entering contracts except where the contract (or related series of contracts) is expected to involve expenditure of less thanUS\$ /Euro [... US\$/Euro]; or

If the Buyer has not provided its consent withinCalendar Days from the day of submission, such consent shall be deemed to have been granted. The Buyer shall be entitled to withhold its consent only if it can sufficiently demonstrate at least one of the following reasons:

- I. the contractual consideration substantially diverges from comparable contracts;
- II. the counterparty does not have the technical experience to perform its obligations thereunder; or
- III. the financial condition of the counterparty according the most recent financial statements available proves it is inadequate to perform its obligations thereunder.

The above-mentioned provisions of this Article 26.2 do not apply to the extent they would hinder the Seller from taking all necessary and proper measures for the protection of life, health, the environment and property if there is an emergency (including a significant fire, explosion; incident involving loss of life, serious injury to an employee, contractor or third party, or serious property damage; strikes and riots; or evacuation of personnel)

Notwithstanding the provisions of Article 26.2, the Seller shall, at any time after the Signing Date, submit to the Buyer its guidelines and procedures that govern the approval that is required for the Seller to enter into contracts.

26.3. [The Seller, its contractors and any sub-contractors employed by the Seller, shall be entitled to employ foreign personnel in [Country].

[The employment of foreign personnel may be regulated herein].

6.27 ARTICLE 27 Notifications – Agent for Service

27.1. Unless otherwise provided in this Agreement, all notices given under this Agreement shall be:

- (a) in writing;
- (b) *in English* or; and
- (c) delivered personally or by pre-paid recorded delivery (or international courier if overseas) or by fax addressed as follows

If to the Buyer:

Attention:

Fax:

With a copy to:

If to the Seller:

Attention:

Fax:

With a copy to:

27.2 In the absence of evidence of earlier receipt, and subject to Article 27.3 and 27.4, a notice shall be deemed given and received:

(a).....

27.3.

27.4.

6.28 ARTICLE 28 Modifications of the Agreement

28.1 The terms of this Agreement, may only be modified by written agreement between the Parties and any amendment of its terms shall only be effective upon with the exception of any amendment effected as a result transfer of operatorship, which will be effective in accordance with the provisions of this Agreement and the Law.

28.2. [Procedure for modification]

6.29 ARTICLE 29 applicable Law

29.1 This Agreement has been executed by the Parties in and in English. In case of any discrepancy, conflict or inconsistency between the two texts, both the English and texts shall be referred to in an attempt to resolve ambiguities but thetext shall prevail.

29.2 This Agreement shall be governed by and construed in accordance with Law.

6.30 ARTICLE 30 Miscellaneous

30.1. This Agreement represents and contains the entire understanding and arrangement of the Parties in relation to the matters dealt with herein and, unless otherwise specified herein, supersedes and replaces from the Signing Date any other understandings and arrangements between the Parties whether written or verbal, relating to such matters.

30.2 In the event of any conflict or inconsistency arising between the main body of this Agreement and any of the Annexes, the provision contained in the main body of this Agreement shall prevail.

30.3 Except where this Agreement expressly provides to the contrary, the rights and remedies contained in this Agreement are cumulative and not exclusive of rights and remedies provided by Law.

IN WITNESS WHEREOF

The Buyer and the Seller have signed the Agreement through their authorised representative (s) on the above-mentioned date.

For the BUYER:

For the SELLER:

6.31 Annexes

ANNEX 1 CONDITIONS PRECEDENT

Seller's Conditions

Buyer's Conditions

ANNEX 2 FACILITY DESCRIPTION AND DESIGN AND TECHNICAL SPECIFICATIONS

This Annex should include, as a minimum, details of:

- the Facility;
- the Connection Facilities to be constructed by the Seller in accordance with the Network Connection Contract;
- the Site Meter to be installed and maintained by the Seller in accordance with the Network Connection Contract;
- the Energy Measurement Equipment to be installed on the Site;
- the Generating Units;
- the Delivery Points;
- the design life of the Facility; and
- any other information which this Agreement provides is to be set out in this Annex 2

ANNEX 3 TESTING AND COMMISSIONING

1. Verification of tests

- (a) Verification of commissioning Tests will be according to the latest published testing procedure: Grid connected photovoltaic systems - Minimum requirements for system documentation, commissioning tests and inspection', for all electrical commissioning.
- (b) The whole of the Facility (including each Generating Unit) will be tested in accordance with the standards required for the Project specified in this Agreement and the detailed test Procedures prepared by the Seller and approved by the Operating Committee in accordance with clause 2 this Annex.

2. **Preparation and review of Detailed Test Procedures**
.....
3. **Observation of Testing**
.....
4. **General scope of Testing**
.....
5. **Testing Expert**

ANNEX 4
NETWORK OPERATOR' S ASSETS

This Schedule will specify all assets and infrastructure to be delivered by the Network Operator (or its contractors or other Government entities) including the 'Interconnection Works' under the *Cost Sharing Agreement* for which the Buyer/Network Operator is responsible.

ANNEX 5
IMPEMENTATION SCHEDULE

The Implementation Schedule is the program and schedule for the design, procurement, construction, erection, installation, testing and commissioning of the Facility and the implementation of the Project.

ANNEX 6
CALCULATION OF PAYMENT

1. **Payment prior to Commercial Operation Date**
 - Calculation of Payment
 - Calculation of Relevant Quantity
2. **Payment on and after the Commercial Operation Date**
 - Calculation of Payment
 - FiT Rate
 - Calculation of Relevant Quantity
3. **Operation and Maintenance Payment**
4. **Calculated Electricity Output**
5. **Calculation of Deemed Delivered Electricity**
6. **Form of FiT Rate Notice**

**ANNEX 7
REQUIREMENT FOR INVOICES**

**ANNEX 8
INSURANCES**

- 1. Insurances required for the period prior to the Commercial Operation Date**
- 2. Insurances required from the Commercial Operation Date**

**ANNEX 9
DIRECT PPA AGREEMENT**

**ANNEX 10
CONSEQUENCES OF TERMINATION**

- 1. Definitions**
- 2. Purchase Price of Facility upon Termination by Seller**
- 3. Purchase Price of Facility upon Termination by the Buyer or Force Majeure Event**
- 4. Payment of Purchase Price**
- 5. Termination Costs**
- 6. Transfer of Facility**

**ANNEX 11
FINANCIAL MODEL**

**ANNEX 12
FORM OF BANK GUARANTEE**

**ANNEX 13
NETWORK CONNECTION CONTRACT**

**ANNEX 14
AGREEMENT PARTICULARS**

**Anticipated Date for Provisional Completion of the
Network Operator's Assets** [insert]

Delay Amount an amount equal to US\$..... per MWac of Installed Capacity per Day.

Letter of Guarantee an amount equal to times the LD Amount.

Insolvency Threshold [to be set at an amount equal to ...% of project value.]

Installed Capacity [insert installed capacity] MWac.

Interconnection Loss Factor ...%.

LD Amount an amount equal to US\$/Euro..... per MWac of Installed Capacity per Day.

LD Cap an amount equal to the times the LD Amount.

Scheduled Conditions the date which is Months from the Signing Date.
Power Purchase Agreement

Satisfaction Date Scheduled

Commercial Operation Date